





CONTESTED-ELECTION CASE OF
WICKERSHAM v. SULZER (DECEASED) AND GRIGSBY

HEARINGS

BEFORE THE

U. S. Congress. House,
COMMITTEE ON ELECTIONS No. 3

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS

SECOND SESSION

ON THE

CONTESTED-ELECTION CASE OF

JAMES WICKERSHAM v. CHAS. A. SULZER, DECEASED
AND GEO. B. GRIGSBY



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COMMITTEE ON ELECTIONS No. 3.

HOUSE OF REPRESENTATIVES,

Tuesday, March 23, 1920.

The committee met at 11 o'clock a. m., Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. A quorum being present, the committee will now come to order. The committee has met for the purpose of hearing the arguments and statements of counsel in the contested election case of James Wickersham v. Charles A. Sulzer and George B. Grigsby. The committee is now ready to proceed with the arguments. Judge Wickersham you may now proceed with your statement of the case.

STATEMENT OF HON. JAMES WICKERSHAM, CONTESTANT.

Mr. WICKERSHAM. Mr. Chairman, for fear the members of the committee have not gone over the brief as it has been submitted, and for fear that the members of the committee would not have the facts with relation to this Alaska contest in their minds, I will go over the various phases of it so that you will have a general view to start with.

In 1916 there was a contest arose over the election of the Delegates in Alaska. At the time the canvassing board finished canvassing and compiling the returns of 1916 I had a majority of 31 to 33 votes. Mr. Sulzer was a candidate against me in 1916. He and I were the Republican and Democratic candidates, respectively. There was a Socialist candidate then who had about one-fifth as many votes as either one of us. We three were the candidates, and I had a plurality of about 31 or 33 votes over Mr. Sulzer at that time. I was in Washington at that time and Mr. Sulzer was in Juneau, the capital of Alaska. A suit was brought by him before the court there and an injunction issued to restrain the canvassing board from issuing a certificate, and after the hearing the judge of the district court there threw out the returns from five or six of the precincts in which I had a considerable majority, and by throwing those precincts out it left me without a majority and gave Mr. Sulzer 19 upon the exclusion of those precincts, and the court then directed the canvassing board to issue a certificate to him. Now, the canvassing board was Democratic. It consists in Alaska of the governor, the secretary of the Territory, and the collector of customs, and at all times in these various controversies and-contests has been a Democratic canvassing board.

Mr. CHINDBLOM. Did you mean to say the secretary?

Mr. WICKERSHAM. The secretary of the Territory.

Mr. CHINDBLOM. Was it not the surveyor general?

Mr. WICKERSHAM. The secretary and the surveyor general are one and the same. I think he is named as the surveyor general, but he is one and the same person, and he is a member of the canvassing board, together with the governor and the collector of customs. Alaska is a Territory, and all of our officials in Alaska are appointed from Washington. all except recently the Legislature of Alaska has provided for the election of an attorney general for the Territory. He is a Territorial official, and is elected by the people of the Territory. Congress has provided for the election of a Territorial legislature, and those two, the attorney general and members of the legislature, are the only elected offices in the Territory of Alaska. All of the others are appointed, and they are all either appointed from Washington or are appointed by those who are appointed from Washington. We have substantially in Alaska a Territorial form of government, appointed by the party in power, and of course for the last eight years the party in power has been the Democratic Party, and all of our officials in that way have been Democratic.

Mr. O'CONNOR. Who are the elective officials?

Mr. WICKERSHAM. The attorney general and the members of the legislature are the elective officials. After the court in Alaska had empowered the Democratic canvassing board to issue a certificate to Mr. Sulzer in 1916 I brought a contest. That contest was brought just as promptly as it was possible for me to bring the contest after the action of the court in compelling the canvassing board to give a certificate to Mr. Sulzer. It was brought on March 4, 1917, the election having been held on November 7, 1916. I brought the contest immediately, and Alaska is a long ways off. It takes a long time to go out there and get testimony. It took me a long time then, and when we got down here in Washington the matter was held up before we could get committee meetings, and we could not get this and that thing done, and the matter was held up so indefinitely that it was not until January, 1919, that we got anything done with that case. It was from November 7, 1916, to January 7, 1919, before we got action on our contest before the House of Representatives.

Mr. CHINDBLOM. Do you not mean 1918?

Mr. WICKERSHAM. No; I mean 1919.

Mr. CHINDBLOM. Your brief says 1918.

Mr. WICKERSHAM. It is a mistake; it should be 1919.

Mr. CHINDBLOM. I call attention to page 4 of your brief and argument, the last paragraph entitled "2. The second Alaskan contest, 1918."

Mr. WICKERSHAM. That is a mistake, it was 1919. Is that not correct, Mr. Grigsby?

Mr. GRIGSBY. The final disposition was in 1919; the hearings were in 1918.

Mr. WICKERSHAM. That is a mistake then in the brief. It should be January 7, 1919. It was not until then that we got final action on it, and only a few days before Congress expired on March 4, 1919, so that I got to serve only three or four days out of the whole two years.

Mr. O'CONNOR. What was the result of that contest?

Mr. WICKERSHAM. I was seated. The committee when it finally got to it found in my favor, and the House sustained the action of the committee and I was seated.

Now, in 1918, at the election we had a very close vote again. The election in 1918 was held on November 5, and the report of the elections committee, they having considered it for almost a year, was not made until 29 days after the election of November 5—on December 4, 1918, 29 days after the election in Alaska. Of course, you can imagine what transpired in connection with the matter of Alaska in the meantime. It was the same old story over again. The same frauds were perpetrated on November 5, 1918, that were perpetrated on November 7, 1916, two years before, because the committee had not decided the case. The committee had not decided that until after the election, 29 days.

One of the principal points of contest in the election of 1916 was the vote of the large number of nonresident soldiers in Alaska. The same nonresident soldiers, not the identical same soldiers, but the soldiers stationed there voted in 1918 on November 5, that voted under the same circumstances that they did in 1916.

Mr. O'CONNOR. What was done with the soldiers' votes in that contest? Were they excluded?

Mr. WICKERSHAM. They were excluded by the committee.

Mr. ELLIOTT. How many soldiers' votes were excluded in 1916?

Mr. WICKERSHAM. Thirty-four or 36.

Mr. ELLIOTT. How many of those 36 soldiers voted at this election?

Mr. WICKERSHAM. In this last election only 1, Louis Selk, of Fort Gibbon, is the only one of those 36 that voted in 1918 who also voted in 1916, the other men all having left Alaska in the meantime.

Mr. ELLIOTT. At this last election, the one now in question, how many soldiers voted at that election?

Mr. CHINDBLOM. Of whose votes you complain?

Mr. WICKERSHAM. Forty-three and twenty-three; that is sixty-six, I think.

Mr. CHINDBLOM. How many of the soldiers voted for Mr. Sulzer?

Mr. WICKERSHAM. All but three, that I know of.

Mr. CHINDBLOM. And whom did the three vote for?

Mr. WICKERSHAM. Those three voted for me.

Mr. O'CONNOR. How did you know that?

Mr. WICKERSHAM. By putting them on the witness stand and asking them.

Mr. O'CONNOR. Is that all in the record?

Mr. WICKERSHAM. Yes. Of course, some of them refused to answer.

Mr. O'CONNOR. How many did you say voted for Mr. Sulzer?

Mr. WICKERSHAM. They are all named in the brief; something like 25 or 30 of them. They are all named in the brief separately.

Mr. CHINDBLOM. The face of the returns showed Mr. Sulzer to have been elected by 33 votes—a plurality of 33 votes.

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. There were not that many soldiers who voted, as you claim, illegally, in 1918, were there?

Mr. WICKERSHAM. Yes, sir; more than that.

Mr. CHINDBLOM. And of those voting for Mr. Sulzer you have proof?

Mr. WICKERSHAM. Yes; I think so.

Mr. CHINDBLOM. Then there are more than 25, as you stated a moment ago?

Mr. WICKERSHAM. Yes, sir.

Mr. CHINDBLOM. How many are there? Can we have that information right now?

Mr. WICKERSHAM. Yes, sir; I will show it to you.

Mr. CHINDBLOM. I am wondering whether we can not narrow this down to same specific issue.

The CHAIRMAN. All right, if you can.

Mr. CHINDBLOM. Is it in the printed document?

Mr. WICKERSHAM. It is.

Mr. ELLIOTT. I would suggest that Mr. Wickersham, who is very familiar with all these names, give us the names of the ones who voted for Mr. Sulzer.

Mr. CHINDBLOM. There is no purpose here to attempt to recanvass the entire vote, is there?

Mr. WICKERSHAM. No. Nobody has asked for that.

Mr. GRIGSBY. I don't think so.

Mr. ELLIOTT. Are there not some contested ballots before the committee to be counted?

Mr. WICKERSHAM. There are some rejected ballots to be examined. Yes.

Mr. CHINDBLOM. We are not expected to count the entire vote?

Mr. WICKERSHAM. No.

Mr. CHINDBLOM. So that the matter before us will be to a large extent disputed ballots and disputes as to the legality of the votes cast and as to the rejection of votes which might have been legally offered? Is that the situation?

Mr. WICKERSHAM. Very largely.

Mr. GRIGSBY. Yes.

Mr. O'CONNOR. The canvass shows that he has been defeated by 33 votes. You say there were illegal votes cast, which will reduce that and would give you a majority?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Is there any question between you in the record as to whether or not the questions now that are being presented to the committee have been properly raised by your notices that have been served with reference to the contest and answer?

Mr. WICKERSHAM. Yes; there are questions of that kind in the record—preliminary questions.

Mr. CHINDBLOM. Those are questions of demurrer.

The CHAIRMAN. Those are legal questions and ought to be taken up separately from the other.

Mr. WICKERSHAM. There are questions of that kind.

Mr. GRIGSBY. Of course, there are disputes all the way through as to the evidence.

The CHAIRMAN. We understand that there will be questions of fact that will be disputed. What I am getting at is whether or not these questions have been legally raised on your pleadings.

Mr. GRIGSBY. I was not aware of any questions of that kind.

The CHAIRMAN. I did not know; I was just making an inquiry.

Mr. HUDSPETH. You have no statute, Judge, in Alaska, as to the number of the ballot that a man casts, the number he may have on

the ballot list and on the poll list. For instance, in Texas, my name, C. B. Hudspeth, is written on the poll list as No. 10 and then No. 10 is placed on my ballot. Have you such a statute?

Mr. WICKERSHAM. No.

Mr. HUDSPETH. You have no way then of identifying the ballot?

Mr. WICKERSHAM. No.

Mr. HUDSPETH. The only way you can determine as to how these respective voters voted is by putting them on the stand and asking them?

Mr. WICKERSHAM. Yes, sir; by evidence outside of the ballot.

Mr. HUDSPETH. What other evidence could you have except the man's own statement?

Mr. WICKERSHAM. It is simply evidence going to show how he voted, of course.

Mr. CHINDBLOM. It is possible that some bystander may have seen the ballot.

Mr. WICKERSHAM. He might have informed people how he voted.

Mr. CHINDBLOM. People frequently state the reverse of how they voted.

Mr. WICKERSHAM. I know that. That is one of the things that I am going to try to make clear to you that has been done in this case.

Mr. CHINDBLOM. A man might mislead another man and say, "I voted for you," and tell some other man how he did actually vote. That is what I wanted to find out as to these contested votes that you say were illegally cast, whether you ascertained that fact from testimony from the identical persons on the stand?

Mr. WICKERSHAM. I tried to. Now, Mr. Chairman, I think this committee ought to let me make some preliminary statement before we get to the list—not just settle this thing offhand, because you can not do it that way.

The CHAIRMAN. Yes; I am inclined to do that.

Mr. WICKERSHAM. It is impossible to do what you suggest. I have got that list already prepared. I have got a list of every vote I challenged and the precinct in which it is located and the precise pages in the record where the testimony is to be found with respect to it. I have got a list of 225 names that I challenged, everyone of them down there in regular order in their own precincts, but you can not determine anything from that. I am going to present it. I have got copies for each one of the committee and for my opponent, so that you may have it before you.

Mr. CHINDBLOM. Nobody intends to prevent you from presenting anything, but we would like to have the list presented as early as possible.

Mr. WICKERSHAM. I have it prepared, but I have not got it here.

The CHAIRMAN. Proceed with your argument in your own way.

Mr. WICKERSHAM. On the other matter I take up, beginning on page 26 of my brief, you will find I take up Mr. Sulzer as a voter, and I have the evidence to show that his vote was illegal. On the next page you will find the name of George A. Nix and the evidence to show that his vote was illegal, and so on every page. I take up the illegality of these votes on each page, and when you get over to the soldiers' votes I take up this matter, beginning on page 81, and I hope you will turn to page 81 and see that I take up every one of these voters and present

the evidence with respect to his vote, and that matter is done in the greatest detail. As I told you, I have this list. There are a great many other matters I wish to settle before you reach that, and I hope the committee will let me present this matter, and I will do it very briefly, because I want this case settled as early as possible. I have been for a long time trying to get the evidence before this committee.

The CHAIRMAN. Present it in your own way.

Mr. WICKERSHAM. In the former case, House report No. 839, Sixty-fifth Congress, in stating the issues to the Committee on Elections No. 1, the final conclusion of the committee was that the merits of the case were confined to matters involved in certain proceedings had before the judge of the United States District Court of Alaska, first division.

Those are the proceedings that I told you about wherein Mr. Sulzer brought suit and the precincts were cast out and I lost the majority by the throwing out of those precincts. The committee took that up and decided that the court was wrong in having cast out those precincts. Second, the legality of the votes cast by native Indians in certain sections of the Territory was considered by the committee. Third, the legality of the votes cast by the soldiers stationed at Fort Gibbon who voted there and the votes of other soldiers in the Army who voted at Eagle precinct were considered.

Those are the three principal points considered by the committee in the other case, and they were decided in my favor. I call that to your attention because very largely these same identical matters involved in this case are the same legal propositions involved in that case and are now to be again decided by this committee. They are not the same identical soldiers but soldiers under the same legal conditions who voted this time, sufficient to do away with the majority of the other side and give me a majority now, if you adopt the same rule that the Democratic committee of the last House adopted.

Mr. CHINDBLOM. You say Democratic committee; was there any division in the committee?

Mr. WICKERSHAM. No, sir; it was a Democratic House and the majority of the committee were Democrats.

Mr. CHINDBLOM. There was no division in that case?

Mr. WICKERSHAM. No.

Mr. O'CONNOR. Are you asking that the entire soldier vote be excluded, regardless of whether they voted for you or for Mr. Grigsby?

Mr. WICKERSHAM. Absolutely.

Mr. O'CONNOR. How would that affect the result?

Mr. WICKERSHAM. That would give me a majority.

Mr. O'CONNOR. By throwing out the soldier vote?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. How do you figure that out mathematically. If there were 200 votes cast, of which I had only 110 and you had 90, and 70 votes were thrown out of the 200, how is that going to give you a majority? Do you want to throw them out entirely regardless of whether they voted for you or Mr. Grigsby?

Mr. WICKERSHAM. Yes; I mean that the soldiers' votes who voted illegally ought to be thrown out whether they voted for Mr. Grigsby or for me.

Mr. O'CONNOR. My purpose was to ask you if you wanted them excluded entirely.

Mr. WICKERSHAM. No; only those excluded who voted illegally.

Mr. O'CONNOR. Those, you claim, were the votes that were cast for Mr. Grigsby.

Mr. WICKERSHAM. Yes, sir.

Mr. ELLIOTT. There are some in there no one knows for whom they had voted, and you can not throw them out.

Mr. WICKERSHAM. That identical condition arose before and they divided equally the votes of those who voted illegally and we did not show who they voted for. The committee the other time divided them up in the proportion as we received the vote in the precincts.

Mr. ELLIOTT. Do you mean they prorated them and threw the whole bunch out?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. If there were 200 votes and you had 100, and they threw out 50, and that proportion was maintained as to the whole, how would such elimination affect the result?

Mr. CHINDBLOM. We have got to have all the facts and all the circumstances before we can begin to have an opinion.

Mr. WICKERSHAM. That is my purpose.

Mr. O'CONNOR. The spark of truth will fly when the discussion of it begins.

Mr. WICKERSHAM. That is based on the record of the other contest. That is to say, specifically, some of the legal authorities involved in this case were involved in the other, and, especially, that the same difficulties arose and the same frauds were perpetrated at this election as were perpetrated at the other election. That is the purpose of it. It is not an issue in this case. There is nothing with respect to the former contest that is in issue before the committee. It has not been plead in the pleadings, and there is no evidence with respect to it especially to make an issue in this case. There is some, but not enough. I only refer to it so that you may know something of the history of this contest.

Mr. CHINDBLOM. Do you claim that frauds were perpetrated?

Mr. WICKERSHAM. Absolutely. The second Alaskan contest arose from the election of November 5, 1918, when I was a candidate on the Republican ticket and Mr. Sulzer on the Democratic ticket, and the same soldier vote was cast, and it was cast almost unanimously for Mr. Sulzer. I have the evidence which will convince you about that to show that he received every one of the illegal soldier votes. All of those we have been able to get on the witness stand to testify have specifically admitted that they voted for Mr. Sulzer. Two or possibly three—we quarrel about one of them—but three voted for me. With that exception they are shown to have all voted for Mr. Sulzer.

Mr. HUDSPETH. What authority of law has a soldier to vote in Alaska?

Mr. WICKERSHAM. A nonresident soldier has no authority of law to vote. They are stationed in different places.

Mr. HUDSPETH. Have you a statute that permits soldiers to vote?

Mr. WICKERSHAM. A resident soldier has the right to vote if he is in his own precinct. A resident soldier has the right to vote in his own precinct.

Mr. ELLIOTT. That is on the theory that he does not lose his residence by going into the Army?

Mr. WICKERSHAM. No; he does not lose his residence.

Mr. ELLIOTT. The other is on the theory that he does not gain residence by being stationed somewhere else.

Mr. WICKERSHAM. The authorities cover that. Those soldiers who were enlisted in Alaska or who were drafted in Alaska have the right to vote in their own precinct just the same as you would in Louisiana.

Mr. ELLIOTT. They may vote, although they are in the military service?

Mr. WICKERSHAM. Yes; if they were in their own precincts.

Mr. HUDSPETH. I know the constitution of the State of Texas bars soldiers from voting as nonresidents, soldiers, sailors, and marines.

Mr. HAYS. That same thing applies in Missouri.

The CHAIRMAN. I understand that your position is that the soldier's residence is not affected in any way by reason of being in the service?

Mr. WICKERSHAM. It is not.

The CHAIRMAN. And if he is in the service and he is legally entitled to vote, he is permitted to vote.

Mr. WICKERSHAM. That is my judgment.

The CHAIRMAN. But he can only vote if he is a resident.

Mr. WICKERSHAM. The authorities are all one way on that proposition.

Mr. ELLIOTT. There are one or two questions raised here. Where a man married up there in Alaska has acquired a residence there and votes, it might be different from ordinary cases.

Mr. WICKERSHAM. Yes; but how can he acquire a residence when he is not there subject to his own volition? He is ordered there by the United States Government as a soldier and may be ordered away at any moment. When they go they pick up their wives and chattels and various things they have gathered around their cantonment and away they go. They do that in every place where soldiers are congregated—around every fort. That is universal where soldiers get married and move around all over the country.

Mr. O'CONNOR. How about the woman he marries—does she lose her right to vote?

Mr. WICKERSHAM. I propose to present authority to show that the husband and wife constitute a family and both have the same rights—that is to say, the family—as to residence. The husband and the wife have the same residence as long as they live together as husband and wife. If they separate or get divorced or separate themselves with the intention of remaining apart, then they no longer constitute a family, and they might acquire separate residences; but as long as they constitute a family they have only one residence; they can not have two residences.

The CHAIRMAN. Have you any authority, Mr. Wickersham, where the woman has a legal residence and a voting residence in the precinct where she marries a husband who is not a resident of the precinct and not a resident of the territory—does that in any manner affect her legal status as a voter? Are there any authorities on the question?

Mr. WICKERSHAM. I do not know of one.

Mr. O'CONNOR. What do you think about that yourself, Judge? Has she lost her right?

Mr. WICKERSHAM. I think so, just as though she married a foreigner. She loses her vote and her citizenship in this country if she marries a foreigner.

Mr. O'CONNOR. How about if she marries a soldier of this country?

Mr. WICKERSHAM. The husband, not being a resident in the district or precinct, if she marries, he establishes a residence under the universal rule. While I have not the authority at hand I think it applies to the husband with respect to voting as well as the wife; the universal rule is she gains residence for all purposes, including the privilege of voting.

The CHAIRMAN. What is the rule with reference to voting, if you have any authority on it, when an American woman marries a foreigner?

Mr. WICKERSHAM. The day before election?

The CHAIRMAN. Yes.

Mr. WICKERSHAM. She loses not only her right to vote but also her citizenship, by the ceremony.

The CHAIRMAN. Have you any authority on that?

Mr. WICKERSHAM. There is authority of law for that.

Mr. CHINDBLOM. Our naturalization law provides that.

Mr. O'CONNOR. Then, a man that serves his country not only loses his political right to cast a vote, but his wife also loses by marrying a soldier her right to vote?

Mr. WICKERSHAM. No; I say she loses it in that precinct.

Mr. O'CONNOR. Where else can she exercise it?

Mr. WICKERSHAM. In the precinct where he lives when she has lived there the requisite time. You would have this situation: You would have the husband voting in one State and the wife voting in another State and precinct although they constitute one family. You can not find any authority for that.

Mr. O'CONNOR. She will have a vote of her own under the constitutional amendment?

Mr. WICKERSHAM. Yes; but when they constitute a family they have to vote in the same place.

Mr. CHINDBLOM. Assume that a soldier has a vote and residence in Illinois. He goes to Alaska and marries a widow who has a domicile and household goods, can not he make that his home from the time he marries her?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. Can not he change his domicile while in the service, if he is in the Army?

Mr. WICKERSHAM. No; the authorities are that he can not.

Mr. CHINDBLOM. By marriage?

Mr. WICKERSHAM. No.

Mr. O'CONNOR. Your contention is that neither he nor she can vote in that precinct?

Mr. WICKERSHAM. Yes. I have only one case of that kind in this record. There is only one instance of that kind.

The CHAIRMAN. What do you say to this: Assuming that you are correct that upon the marriage the wife assumes the residence of the husband, but for the purpose of voting, this soldier is a resident of Illinois in a certain precinct, and he marries in Alaska. He returns to the precinct in Illinois the day before election?

Mr. WICKERSHAM. He can vote.

The CHAIRMAN. He can vote. What would you say about the wife?

Mr. WICKERSHAM. She can not.

The CHAIRMAN. She has not assumed the residence of the husband early enough. But suppose she had been married for two years in Alaska.

Mr. WICKERSHAM. And that was his home in Illinois?

The CHAIRMAN. The home was still in Illinois.

Mr. WICKERSHAM. That would depend upon the phraseology of the election law.

The CHAIRMAN. But under the election law of Illinois they are required to be residents of the State one year and of the county 90 days and of the precinct 30 days. Do you mean to say to this committee that the marriage of the wife up in Alaska two years before would have made her under the election law a resident of Illinois for one year, a resident of the county for 90 days, and a resident of the precinct for 30 days; that she could vote under the law?

Mr. WICKERSHAM. No: I do not think that is the law.

Mr. O'CONNOR. According to his contention she does not acquire rights in the State of Illinois, but has lost them in Alaska.

The CHAIRMAN. Then she by her marriage loses her vote in Alaska but does not gain a vote in Illinois, unless she complies with the election laws of Illinois.

Mr. WICKERSHAM. That is my contention. That is for you gentlemen to decide. We have only one instance of that kind in this record and it is not material a great deal with this row in Alaska.

Mr. ELLIOTT. Is not a man's residence largely a matter of his intention?

Mr. WICKERSHAM. Absolutely.

Mr. ELLIOTT. Why would not it apply to the woman?

Mr. WICKERSHAM. The same rule applies to the woman that applies to the man.

Mr. O'CONNOR. You are going to prove the domicile of the wife is the domicile of the husband?

The CHAIRMAN. As a legal proposition, I think you are right on that; but when you come to the election laws I want to investigate your proposition a little further.

Mr. WICKERSHAM. I have said to you very frankly that I have not a single decision that in any way sustains me on that, so far as the election laws are concerned, and that there is only one instance of it in the records, and I do not care what you do about it. But my judgment is that the family has one residence and one only, and that is where the husband maintains his home, and I do not care what you do about it.

Mr. CHINDBLOM. The only fault I can see in your argument is where it is claimed that the husband, the man who marries the widow, can not change his own domicile by wanting to make his domicile where his wife's domicile is. Suppose that he had household goods in Chicago. He had a residence there; he moved everything he has up to Alaska and moved in with the woman whom he married there, and from that time on her home became his home. You say he could not change his domicile because he is a soldier?

Mr. WICKERSHAM. There are decisions to that effect.

Mr. CHINDBLOM. The decisions may be general to that effect, but would they go to that extent upon that statement of facts?

Mr. WICKERSHAM. I think there might be a case presented where a soldier would gain a residence while he is a soldier.

Mr. CHINDBLOM. As a general proposition, a soldier does not acquire a residence by moving his whereabouts on account of his service. That is true; but he might change the domicile if it is his intention, proven by circumstances and facts, to do it.

Mr. WICKERSHAM. We have had two or three of these soldiers in Alaska who have undertaken to assume that position, but just the moment they got to the point where they were discharged they were sent out of Alaska to be discharged, and they and their wives left Alaska and never came back; not a single one of them has remained in the Territory. They have all gone away, everyone of them. That is a mere subterfuge for the purpose of trying to sustain the validity of their vote, because these people gather around these Army posts; they come and go with the Army, and the women with them. They do not have any home there. Wherever their home is it is not at that post, because that is a mere temporary location for them. I am going to argue that when I come to it along in my brief.

Mr. ELLIOTT. There is only one case of that kind in the brief?

Mr. WICKERSHAM. Of course, there are two or three others that have made a pretense of that kind, but this case is where a woman named Tyer and her husband claimed the same thing here; yet the record shows beyond any dispute and the testimony taken at Valdez of the Tyers shows that they were ordered to proceed to the States for discharge; they signed their affidavits at Valdez, Alaska; they went home to Missouri, and the wife went along. Yet they say they were Alaska voters. They were not Alaska voters in any sense of the word, and the record shows that.

Mr. O'CONNOR. Is there any act of Congress with respect to the political rights of soldiers and whether they could exercise these rights; and if so, under what circumstances and conditions?

Mr. WICKERSHAM. No.

Mr. O'CONNOR. In Texas they could not vote, either?

Mr. WICKERSHAM. In Texas they could not vote, either?

Mr. HUDSPETH. A soldier could not vote in Texas if he is in the military service of the United States, nor sailors, nor marines, idiots, insane, and persons under 21 years of age.

Mr. O'CONNOR. Under what theory do you classify them with idiots and insane?

Mr. HUDSPETH. On the clause that they are in the Government service. That theory has been in our constitution in Texas since 1845.

Mr. WICKERSHAM. At the election of November 5, 1918, there were three candidates—myself, Mr. Sulzer, and Mr. Connolly, who received 329 votes—he was a Socialist—while I am credited on the face of the returns with 4,454 and Mr. Sulzer 4,487, a plurality for Mr. Sulzer of 33 votes.

But the very frauds for which the Democratic House of Representatives and the Democratic Committee on Elections No. 1 unseated Mr. Sulzer in 1916 were repeated in 1918. His apparent plurality of 33 votes in 1918 was made up by the votes of the same

nonresident soldiers in the Regular Army stationed in far-away and peaceful Alaska, which the House had cast out of the 1916 returns as illegal.

Mr. O'CONNOR. The 1916 returns showed you had 33 majority and the 1918 returns showed he had 33 majority.

Mr. WICKERSHAM. Yes.

Mr. ELLIOTT. That is before they threw out some of the precincts?

Mr. WICKERSHAM. I did not go into the court to try to get any of the precincts thrown out.

Mr. ELLIOTT. The election returns showed you had a majority of 31 in the first election, but they threw out some precincts which gave him 19.

Mr. O'CONNOR. You said you did not go into the courts in 1918 to have some of them thrown out. Why did you not?

Mr. WICKERSHAM. Because I came to the court which has authority and the duty to decide these questions which no other court in the land has.

Mr. O'CONNOR. In 1916?

Mr. WICKERSHAM. They had no jurisdiction at all; it was a rough-house proposition.

Mr. O'CONNOR. Did you contest their right to throw them out?

Mr. WICKERSHAM. No; I was not even made a party to that suit or given any notice of it.

Mr. O'CONNOR. It was a mandamus proceeding against the election board?

Mr. WICKERSHAM. No; I knew nothing about that until afterwards.

Mr. ELLIOTT. You just rested on your right to contest before Congress?

Mr. WICKERSHAM. Yes. I made no effort to go to court, because I knew that no court has jurisdiction to try an election contest, which must come to Congress. The only power the court has in Alaska or elsewhere is to issue mandamus to compel the canvassing board or the proper officials to proceed to do their duty up to the point where they should make a finding. The court can compel them to march forward to do their duty. But the court can not control them in the practice of their duties, nor can it show them what they shall do; but it can compel them to go ahead and do it. Then the only relief for either side is to go before the House of Representatives.

Mr. O'CONNOR. The only thing the canvassing board had to do in 1916 or 1918 was to canvass the returns and publish them?

Mr. WICKERSHAM. There is some of that in this record for 1916.

Mr. O'CONNOR. That is your legal proposition that the canvassing board can not investigate, but should promulgate the returns. I thought you held that it is a purely ministerial act; that they can not be mandamus'd to do anything other than that?

Mr. WICKERSHAM. The courts have no jurisdiction.

Mr. O'CONNOR. They can not throw out, subtract, or add to the vote.

Mr. WICKERSHAM. The court has no authority to do anything of that kind, although the court in Alaska did do just exactly that; but the committee here paid no attention to it.

Mr. ELLIOTT. A contested-election case is one in which Congress has sole jurisdiction and final judgment.

Mr. O'CONNOR. But they did do it in 1916, according to his statement.

Mr. ELLIOTT. The committee paid no attention to it.

Mr. CHINDBLOM. While Congress is the sole judge of the eligibility and qualification and the election of its own Members, you would not go so far as to say that local authorities have no right to administer their own laws with respect to conducting an election?

Mr. WICKERSHAM. Oh, yes; there is no question about that.

Mr. CHINDBLOM. Even if the election involved action by Congress?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. And everything they do is subject to the superior authority of Congress to determine?

Mr. WICKERSHAM. No; I go further. The courts in the States have no jurisdiction whatever over these matters and things connected with a contested-election case in Congress.

Mr. CHINDBLOM. After it becomes a contested-election case?

Mr. WICKERSHAM. At any time, except to see that the election officers performed their duties legally and in proper order and go ahead to the finish of their duties.

Mr. CHINDBLOM. That is the only authority that any courts have ever undertaken, to see that the election officials performed their duties properly.

Mr. WICKERSHAM. The court has no authority to throw out a precinct and declare a man elected.

Mr. CHINDBLOM. That was done in 1916 by mandamus proceedings?

Mr. WICKERSHAM. Yes. Here is what the court did, on page 4 of my brief. This is the judgment, directed to the canvassing board:

Therefore, this is to command you and each of you, that upon receipt of this writ of mandamus you do forthwith convene as a canvassing board for the Territory of Alaska, and that you reject the vote from said precincts of Choggiung, Deering, Nushagak, Utica, Bonnifield, and Vault, and that you issue a certificate of election to Charles A. Sulzer as having received the greatest number of votes for Delegate to Congress from Alaska, and that said certificate be in the usual form as by law provided. * * *

This is signed by the judge.

Mr. O'CONNOR. That is from the petition of Sulzer?

Mr. WICKERSHAM. That was the decision of the judge. That was the mandamus, the order to the canvassing board to give him the certificate without any notice to me at all.

Now, we have a third contest. My first contest in the 1918 election is with Mr. Sulzer. On April 15, 1919, Mr. Sulzer died. The election was held November 5, 1918. Mr. Sulzer died on April 15, 1919. The certificate of election had not been issued. The returns were not all in. The territory is large and the returns had not been compiled and a certificate issued. He died on April 15, and a certificate was issued to him April 17, two days after his death. Then, of course, under the statute I had to bring my suit of contest within 30 days under the United States statute. The man was dead. I had prepared my notice of contest and all that kind of thing, and had left it at Ketchikan with an attorney at Ketchikan to be served upon Mr. Sulzer as soon as Mr. Sulzer should come over to Ketchikan and it should appear that the certificate had issued. On his way to Ketchikan the poor fellow died and there I was, the certificate was issued to him and the party was dead.

I had to file my notice of contest within 30 days after the issuance of the certificate. I did that. I took this same notice of contest, which I had ready to serve upon Mr. Sulzer, recast the first three or four pages of it to fit the situation and make allegation that he was dead. I sent it on to Washington City and filed it with the Clerk of the House. It was dated May 31, 1919, and it was published here as House Document 74, Sixty-sixth Congress, first session. It was received in the office of the Clerk; the Clerk wrote a letter and sent it to the Speaker of the House of Representatives. Congress ordered it to be printed; it was printed as House Document 74. That is the foundation upon which the suit now pending was based. I had to go to work to get testimony because the statute limits the time in which you can take testimony to 90 days. It requires notice to be served upon the opposite party and proceeds to state how service should be made. I had to proceed ex parte. There was no contestee alive. I did proceed ex parte, and I did take my testimony substantially as it is now contained in this big record as ex parte. That was sent on to the Clerk of the House and ordered printed, and it was printed.

But, in the meantime, Mr. Grigsby prepared a bill, and had the legislature pass it, calling a special election, and a special election was held in Alaska on June 3, 1919, Mr. Sulzer having died on April 15. The special election was held on June 3. I declined to be a candidate. I felt that I had been elected in November.

MR. O'CONNOR. That is the authority to call a special election—the legislature?

MR. WICKERSHAM. Yes. I felt that I had been properly elected in November, preceding.

MR. HUDSPETH. When was that act passed, Judge?

MR. WICKERSHAM. That act was passed on——

MR. CHINDBLOM. It was approved April 28, 1919?

MR. HAYS. It was passed after the election under which you claimed title?

MR. WICKERSHAM. Yes, sir.

MR. O'CONNOR. And after the death of Mr. Sulzer?

MR. WICKERSHAM. Yes. Mr. Sulzer died April 15, and this act was passed April 28, and the election was held on June 3. Now, at that election, Mr. Grigsby was a candidate, and a man by the name of Jones, a union labor man, was a candidate. We do not know what happened at that election. There is no proof in the record as to who was elected.

MR. O'CONNOR. What did the returns show?

MR. WICKERSHAM. There is no return in the record anywhere as to that election. There is not a scintilla of evidence anywhere in this record.

MR. O'CONNOR. The board canvassed Mr. Grigsby's election returns?

MR. WICKERSHAM. Mr. Grigsby appeared here with a certificate of election, and he was seated on that certificate of election.

MR. O'CONNOR. Issued by the board there?

MR. WICKERSHAM. Yes; issued by the canvassing board. Now, when we get to that I want to show that that certificate was issued only 14 days after the election. It was issued when only 33 precincts

had reported. Four-fifths of the precincts had not reported to the canvassing board, when again, by force and arms, they issued a certificate and he was seated.

Mr. O'CONNOR. Would you have any rights in that situation at all? I mean as a contestant here, not as a citizen, or would it not rather be Jones?

Mr. WICKERSHAM. No. If Mr. Sulzer was elected on November 5, 1918, then I was not elected at any time.

Mr. O'CONNOR. Then Jones would have a right to bring it?

Mr. WICKERSHAM. No; any citizen would have that right.

Mr. O'CONNOR. To bring it here?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. As against Grigsby?

Mr. WICKERSHAM. As against Grigsby.

Mr. O'CONNOR. And in behalf of Jones?

Mr. WICKERSHAM. Oh, no. Any citizen has a right to present a contested election case to show that a man was not legally elected.

Mr. O'CONNOR. Even though Jones, the candidate, does not become a party to the issue?

Mr. WICKERSHAM. That is not involved in this case, and I would not like to commit myself to something that is not involved.

Mr. O'CONNOR. In other words, I wanted to see whether or not the Jones-Grigsby election was relevant at all to the issue made by you. Of course, if you were elected in 1918 that settles the Grigsby case, but if you were not elected in 1918, I fail to see what interest you had in the special election.

Mr. WICKERSHAM. Except as a citizen.

Mr. O'CONNOR. I do not see how it could seat you.

Mr. WICKERSHAM. It would not seat me.

Mr. CHINDBLOM. But he might claim that nobody was elected.

Mr. ELLIOTT. You are not contesting Mr. Grigsby's election upon the ground that there were not enough votes to elect him, but that the election was illegal, and the law under which the election was held was illegal?

Mr. WICKERSHAM. Yes, sir.

Mr. HAYS. And that any election at that time was unauthorized?

Mr. WICKERSHAM. Unauthorized and void. My theory is that the whole election on June 3 was unauthorized and void and that the certificate is void because it is in violation of the United States statute.

Mr. O'CONNOR. But if you were elected over Sulzer, I do not see what that has to do with the case.

Mr. WICKERSHAM. No.

Mr. O'CONNOR. If you were not elected over Sulzer, it looks to me that Jones ought to be the contestant.

Mr. ELLIOTT. It has this much to do with it. The contestant here claims that an illegal-election law was passed in Alaska, and if that was so, Congress might as well decide it now as hereafter. I think that is all there is to it.

Mr. WICKERSHAM. Yes, sir. Those same questions are involved all the way through in this case. The question in this case is going to turn very largely on whether or not the Legislature in the Territory of Alaska has any power to change the election laws passed by Con-

gress for the election of a Delegate from Alaska. My contention is that the Territorial legislature is barred by the act of Congress from amending that law in any respect or changing it, and this act under which Mr. Grigsby claims to have been elected on June 3 is in violation of the law in almost every State.

Mr. HAYS. But after all, so far as this particular contest is concerned, that is merely an academic question.

Mr. WICKERSHAM. No; only so far as my right is concerned——

Mr. HAYS (interposing). That is what I mean, so far as your personal right to this contest is concerned.

Mr. WICKERSHAM. So far as my right to a seat is concerned?

Mr. HAYS. So far as your personal right to this contest is concerned, the matter of that election law is purely an academic question.

Mr. WICKERSHAM. Yes; but so far as my right as a citizen of Alaska is concerned, it is not an academic question. Now, Mr. Chairman, do you want to continue?

Mr. ELLIOTT. It is past 12 o'clock.

Mr. O'CONNOR. I make a motion that we recess until——

The CHAIRMAN (interposing). We might take a recess here.

Mr. WICKERSHAM. I have only a few more statements to make, and if you will give me a few minutes I can conclude now.

The CHAIRMAN. Well, proceed.

Mr. WICKERSHAM. Now, when I came here——

Mr. O'CONNOR (interposing). Judge, I did not suggest that we recess with any motive—I want to hear Col. Wickersham through and through, and if I ask any questions it is not evidence of any political hostility as a member of this committee, but simply to get information. I can not repeat too often with my tongue what sounds well to my ear. I only learn by propounding questions and getting answers to them. I suppose I am entirely human in that respect.

Mr. WICKERSHAM. Now, Mr. Chairman, Mr. Sulzer's death on April 15, and the issuance of the certificate of election to him on the 17th of April, put me as a contestant in this sort of attitude. Under the statute I had to file my notice of contest within 30 days, and under the statute I had within 90 days thereof to get my testimony, or I would be out, and I did it. I filed my notice here, and it was printed as House Document No. 74, in this Congress. I went out and took my testimony the best I could and brought it here and it was printed. Your honor looked me in the eye, upon Mr. Grigsby's objection to that situation, and said, "Mr. Wickersham, it seems to me that the general rule is that you will have to go back and take this testimony all over again upon notice," and you compelled me to go back to Alaska, to go out and hunt up all these witnesses again, and bring them in before the notary public and take their depositions all over again. I had it to do. I saw that there were difficulties of that kind involved that might give me a great deal of trouble. Mr. Vestal of Indiana offered a resolution to put this case in some better shape. That was House Resolution 105, which was before this committee and will be found printed on pages 6 and 7 of the brief.

I want to call your attention to two or three features of it. The second paragraph in that resolution provides that contestant Wickersham shall have the first 40 days thereof in which to take his testimony—because under the statutes my time had all expired—which shall be taken in the manner provided by the present statute

governing the taking of testimony in contested-election cases, by notice served on George Grigsby. Now, under the usual rule I had to make that service on Mr. Sulzer, but this resolution passed by this committee and reported to the House required me to give that notice to Mr. Grigsby and permitted me, upon doing that, to go back and take all this testimony over again, and we did it. I went back to Alaska immediately after the passage of this resolution and started in to take my testimony. I had 40 days in which to do it, and I ought to have had 60 days. Mr. Grigsby had the next 40 days in which to take his testimony, and I had 10 days then in which to take rebuttal testimony. We went through all that, and the testimony is here now for the second time. It has taken us from the date of this resolution, July 28, up to this minute to get back to the point where I was when I stood before this committee last June. For eight months I have been out now getting this evidence and getting it before the committee, and I am back just where I was then, with the same testimony, the same witnesses, substantially all the way through, except that it has been taken upon notice and cross-examination. It had not been before that.

Now, I only want to call your attention to one or two other things in this resolution. Paragraph 5 of that resolution provides that the governor of Alaska and the custodian of the election returns and attached ballots of the election of November 5, 1918, be required to forward by registered mail to the Clerk of the House of Representatives all the election returns and papers and ballots of that election for the inspection and consideration as evidence by the House. Now, all those papers are here. The governor complied with that resolution and has forwarded to the House all the papers; and those returns, ballots and everything are now before this committee, and they are all made evidence by this resolution.

The CHAIRMAN. I want to say in that connection, Mr. Wickersham, that the clerk has advised me that these papers are at his office, but I have not called them to the committee's attention yet but was awaiting this hearing before getting that testimony before the committee.

Mr. WICKERSHAM. Oh, yes; I knew that; but I am only pointing out some of the facts to show these documents are all here and they are evidence. Now, in the ninth paragraph of this resolution is a matter of very great importance to me, and it is a matter that you will hear a good deal about probably from both sides. Paragraph 9 provides that the Secretary of War be, and he is hereby, requested to order by telegraph immediately upon the passage of this resolution that the 40 soldiers named, and whose Army status is described in the certified list dated June 11, 1919, signed by the War Department officials, and which list is attached to the application of contestant for the passage of this resolution, be assembled at the office of the commanding officer of the United States military cable and telegraph in the towns of Valdez, Sitka, and Fairbanks, Alaska, within the 40 days' period for taking testimony by the contestant, then to be examined under oath by contestant or his attorney or agent, touching the matters and things alleged in the notice and statement of contest on file in this House and in this cause. Now, I propose to show you that that was never done. It was not done immediately, and it was not until after the thirty-third day of my 40

days that any attention was paid to my efforts to get that done. For 33 days——

Mr. O'CONNOR (interposing). Was the Secretary of War apprised of the adoption of this resolution?

Mr. WICKERSHAM. I suppose so. I applied to the various officials having charge of those men out in Alaska, and these facts were telegraphed to the department.

Mr. HUDSPETH. Did you ever wire the Secretary of War yourself?

Mr. WICKERSHAM. No, sir. I applied to Col. Lenoir, commanding officer, who has entire charge of the whole matter in Alaska.

The CHAIRMAN. Now, just one question with reference to that. As you have suggested that this will be heard of frequently, I would like to know now, assuming that the Secretary of War or the War Department did nothing in compliance with the request of Congress, what has this committee anyway to do with that, and what can we do with that feature?

Mr. WICKERSHAM. Well, you can consider it when you consider the efforts that I have made to get the testimony of these soldiers.

The CHAIRMAN. But it is not a question of effort, it is the testimony before the committee.

Mr. WICKERSHAM. That is true.

Mr. CHINDBLOM. Did you get the testimony of these soldiers?

Mr. WICKERSHAM. Oh, yes; everyone that we could find we either go on the witness stand or got him up to a point where he had an opportunity to testify and refused.

Mr. CHINDBLOM. Did you get them all, and was this resolution substantially complied with?

Mr. WICKERSHAM. It was not.

Mr. HAYS. How many of these 40 soldiers did you get?

Mr. WICKERSHAM. I have a list of them. I will present it at the next meeting.

Mr. HAYS. The testimony of how many was obtained in this record?

Mr. WICKERSHAM. About 30.

Mr. HAYS. So that any noncompliance by the Secretary of War with this request deprived you of perhaps not to exceed 10?

Mr. WICKERSHAM. It deprived me of a good deal more than that, because if the Secretary of War had complied with that request immediately and had brought those men up, I would have had some opportunity, if they had refused, to have gone into court or gone somewhere to get them to testify.

The CHAIRMAN. But, Judge, how can this committee consider that?

Mr. WICKERSHAM. That is for you to consider after the evidence is all before you.

The CHAIRMAN. I understand that, but we want to get at the law and the facts in this case. How can this committee, in determining this question upon the facts and the law presented here, determine a question that is not before us? Even if the Secretary of War has failed to do his duty, what jurisdiction has this committee over that?

Mr. WICKERSHAM. Oh, you have not any jurisdiction over him.

The CHAIRMAN. Well, over the question involved?

Mr. WICKERSHAM. You have this to consider, that I made every effort that it was possible for me to make, through the Secretary

of War, through this resolution, through appeals to the soldiers, through issuing subpoenas to them to compel them to come in, through every way that I could——

Mr. O'CONNOR (interposing). Mr. Chairman, I think Judge Wickersham is absolutely correct on that, if he was prevented by the Secretary of War——

The CHAIRMAN (interposing). But suppose the Secretary of War prevented your getting the testimony by his action and the testimony is not before us——

Mr. WICKERSHAM (interposing). But the testimony is here.

The CHAIRMAN (continuing). How can we consider it?

Mr. WICKERSHAM. The testimony is here.

Mr. O'CONNOR. We ought to find out whether the Secretary of War hampered them or whether the charge made by Judge Wickersham has any foundation in fact.

Mr. HUDSPETH. What bearing has that on the illegal votes claimed to be cast in that election?

The CHAIRMAN. That is what I am wondering.

Mr. HUDSPETH. Possibly Mr. Grigsby will make a statement about it; but what bearing will that have upon your statement that there were illegal votes cast? We have got to decide this case on the testimony.

Mr. O'CONNOR. On the soldier vote.

Mr. HUDSPETH. No. If the Secretary of War is guilty of laches, that is entirely irrelevant and immaterial.

The CHAIRMAN. How can we go into that question?

Mr. HUDSPETH. The judge says it is a question of what effort he made.

Mr. HAYS. I think it is like the sheriff in a circuit court in a criminal case. If the sheriff does not do his duty in serving the subpoenas and getting the witnesses before the court, that fact is not a matter for the jury.

Mr. HUDSPETH. It is a matter for the court in granting a continuance of the case. Now, if the judge wanted a continuance on that ground——

Mr. WICKERSHAM (interposing). I am not asking for anything like that. I think we have plenty of testimony without it.

The CHAIRMAN. To my mind it seems immaterial.

Mr. WICKERSHAM. All right.

Mr. WICKERSHAM. It is going to be somewhat important in this aspect of the case, that every effort was made by Mr. Grigsby and his attorneys and agents in Alaska to keep these soldiers from testifying. They were instructed by his attorneys and agents that they did not have to testify unless they wanted to, as to who they voted for, and every obstacle was laid in the way by the War Department and by the contestee's attorneys and agents to prevent that testimony.

Mr. O'CONNOR. I think the Secretary of War is entitled to make his view known to this committee in view of that charge.

The CHAIRMAN. That is not a question material to this case.

Mr. O'CONNOR. Well, he said it would be heard from on the floor of the House.

Mr. WICKERSHAM. No; I did not say it would be heard on the floor of the House.

Mr. HUDSPETH. Then we would be trying Mr. Secretary Baker and not trying this case.

Mr. O'CONNOR. But that is a serious charge, Mr. Hudspeth, and we ought to go into it.

Mr. CHINDBLOM (interposing). As a matter of fact, Mr. Chairman, let me ask this question: How many soldiers that you desired to appear to testify actually failed to appear by reason of the circumstances which you have mentioned?

Mr. WICKERSHAM. Oh, very few; very few.

Mr. CHINDBLOM. How many, would you say?

Mr. WICKERSHAM. Oh, 10 or 15.

Mr. CHINDBLOM. I think you said you did examine 30 of them or give 30 of them a chance to testify, and there were 40 in all?

Mr. WICKERSHAM. Yes; something like 15 or 20 of them refused to testify.

Mr. CHINDBLOM. That is another matter, but of the 40, 30 were actually brought in and given an opportunity to testify?

Mr. WICKERSHAM. Yes. I may be mistaken as to the exact number, but substantially that.

Mr. O'CONNOR. But your charge is that due to the laches and collusion of the Secretary of War you did suffer substantial wrong in not being able to get and cross-examine 10 men?

Mr. WICKERSHAM. You are using words that I did not say at all. I did not say laches or anything of that kind. I simply said that no notice was given and that those people were not brought up until the thirty-third day. That is what I said, and the record shows it.

Mr. HUDSPETH. Before we go any further, Mr. Chairman, in this matter relating to what the Secretary of War may have done or may have failed to do, let us not forget that paragraph 9 of this resolution reads that the Secretary of War be, and he is hereby, requested—note that word “request.”

Mr. WICKERSHAM. And he did not do it.

Mr. HUDSPETH. It is a request of Congress; and, in any event, if he failed to comply with that request, it would not be laches of duty, would it?

Mr. WICKERSHAM. But I am only suggesting it because it is one of the things that prevented me from getting these witnesses and examining them.

Mr. HAYS. This committee has no right of compulsion in regard to witnesses.

The CHAIRMAN. No, sir; and the House by resolution did not attempt to compel any one.

Mr. HAYS. No, sir; it was a request by Congress. Now, whether that was complied with or not has no bearing on the determination of the case on the question of evidence. We can only consider the evidence which was actually submitted, and if some officer was derelict in his duty it does not involve the merits of the controversy in anyway, and I do not think this contest ought to be made an inquiry at this time particularly into the matter of any dereliction of duty on the part of the Secretary of War or anybody else.

Mr. HUDSPETH. I move that we refer that matter to this War Expenditures Committee.

Mr. O'CONNOR. But seriously, do you not think that that is a matter which is pertinent to the issue raised here?

Mr. HUDSPETH. I do not think so. I do not see why we should determine that question.

Mr. O'CONNOR. If you did not think so, why did this committee adopt this resolution requiring these soldiers to appear?

Mr. HUDSPETH. That was done by the House.

Mr. HUDSPETH. It was not a demand, it was a request that the soldiers be furnished for the purpose of taking their evidence, and so far as the evidence was taken, we are here to consider it. The evidence that was not taken, I take it, we will be unable to consider.

Mr. WICKERSHAM. Yes; that is the law.

The CHAIRMAN. Even though you were wronged?

Mr. WICKERSHAM. Yes; there is no question about that.

Mr. HAYS. The more we discuss this question the further we are getting away from this case.

Mr. HUDSPETH. Yes; I think so.

Mr. HAYS. Then let us quit this discussion.

Mr. O'CONNOR. Like Banquo's ghost. It will not down.

Mr. WICKERSHAM. Paragraph 10 of this resolution provided that the testimony of all witnesses shall be reduced to writing, signed by the witness, verified, and returned to the Clerk of the House of Representatives for use in these causes in the manner provided in the laws of the United States relating to contested elections and modified by this resolution. Now, there are 14 depositions presented by Mr. Grigsby which have not been signed or verified by the parties to them, and I want to call that to the attention of the committee right now.

The CHAIRMAN. Are those the ones not included in the record?

Mr. WICKERSHAM. I think there are seven or eight in the record that are not signed or verified.

Mr. GRIGSBY. I will state that all those in the record that I know of that are not signed are now in the possession of the clerk, signed and verified. I sent back to have those corrections made, and they came back too late to be printed.

The CHAIRMAN. The original is now on file with the clerk, of all those that are printed in the record?

Mr. GRIGSBY. Yes, sir. Now, there are 8 or 10 from Anchorage that are not printed at all that are also in the possession of the clerk, signed, verified, and authenticated—I do not know whether properly or not, because I have not seen them; they have not been opened.

The CHAIRMAN. Were they taken within the time?

Mr. GRIGSBY. They were taken within the time.

The CHAIRMAN. There is no question, Judge, that those depositions were not taken in the time, under the rule?

Mr. WICKERSHAM. Here is the situation: Notice was given and witnesses were examined within the time, but their depositions were sent on here without being signed and verified, and long after the time had expired they were sent back to be signed and verified. This is the first time I have known that they were signed and verified.

The CHAIRMAN. You mean that the testimony was taken within the time?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. They were signed after the time expired?

Mr. WICKERSHAM. If they were signed at all. I have never seen them. I have not heard that they were signed before.

The CHAIRMAN. Do you raise the question that they are not valid if they are signed after the time?

Mr. WICKERSHAM. I do not raise any question about it. I have not seen them. I submit the matter to the committee.

Mr. GRIGSBY. I was just notified this morning that they had got here.

The CHAIRMAN. I wanted to know, Judge, what is the claim on either side with regard to that testimony, because we will send for it and have it before the committee at the next meeting, and I wanted to know what the claim was.

Mr. WICKERSHAM. So that the matter may be decided by the committee, I make the formal objection to them on the ground that they were not taken, signed, and verified within the time. I do not make much of a fight over it, but I make the formal objection for this reason: I do not know anything about them; I have never seen them; they are not printed in the record; and I have not had an opportunity to examine them in making up my brief, except that I was shown the papers, and he told me the situation, and I knew that at the time he made that claim that they were not signed, but he was going to send them back and have them signed.

Mr. O'CONNOR. Do either one of you gentlemen intend to file supplemental briefs?

Mr. WICKERSHAM. No; I do not. I am the only one who has a right to file a supplemental brief, and I do not intend to. Now, with respect to those depositions: I raised that point about that clause of the resolution, and I did it without knowing that those depositions were here or that the others were signed. But they are not signed in the record. I do not care much about it one way or the other, except that I think the committee ought to lay down a correct rule of the matter and not compel me to answer evidence that I have never seen or do not know anything about, taken long after the time has expired.

The CHAIRMAN. The committee has not seen the evidence either. It has not been before the committee. But if it is before the clerk, he will have it sent to the committee so that at the next meeting it will be before us.

Mr. WICKERSHAM. I suppose it ought to be printed. I would like to have a copy of it. I do not know what it is.

Mr. GRIGSBY. I will state, with reference to that which is printed—of course, you have seen that?

Mr. WICKERSHAM. Yes; I have seen that.

Mr. GRIGSBY. That has been corrected and signed since. Now, this other testimony relates to a few illegal votes in Anchorage, a precinct which Mr. Wickersham carried, but none of the depositions show which way the illegal voter cast his vote. I believe I told you that before.

Mr. WICKERSHAM. If you did, I have forgotten it.

Mr. GRIGSBY. It simply shows that this precinct rule was violated up there, as elsewhere, and it might have an effect if the vote was prorated. However, it is not a very serious matter.

The CHAIRMAN. How many are there?

Mr. GRIGSBY. I think there are eight.

The CHAIRMAN. Of the ones that are not in the record?

Mr. GRIGSBY. Yes, sir.

The CHAIRMAN. Is it a long deposition, or are they short?

Mr. GRIGSBY. They are short. They are so short it would be easy to have a typewritten copy made for Mr. Wickersham.

Mr. CHINDBLOM. Was Mr. Wickersham represented when they were taken?

Mr. WICKERSHAM. Yes, sir.

Mr. GRIGSBY. They came down here, in the first place, addressed to the clerk of the Committee on Elections instead of being addressed to the Clerk of the House, as the law requires. I think they went to the No. 2 committee and they were sent over by the clerk.

The CHAIRMAN. I do not know what came here. I know I had everyone here refuse to accept anything that came except when transferred by the clerk direct.

Mr. WICKERSHAM. I was notified that those depositions were to be taken, and my attorney appeared and cross-examined the witnesses, but I was not there and knew nothing about it, although the man who appeared for me had the authority, but they are not in the record.

(Thereupon, at 12.30 o'clock p. m., the committee adjourned until Monday, March 29, 1920, at 8 o'clock p. m.)

COMMITTEE ON ELECTIONS No. 3,
HOUSE OF REPRESENTATIVES,
Monday, March 29, 1920.

The committee met at 8.15 o'clock p. m., Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. Gentlemen, there is a quorum present, and you may proceed with your argument, Mr. Wickersham.

STATEMENT OF HON. JAMES WICKERSHAM, CONTESTANT.

Mr. WICKERSHAM. Mr. Chairman, I refer the committee to page 7 of the brief, and I intend to begin at that point because there begins the argument with relation to the law in this case.

I call the attention of the committee, first, to a full discussion there of the power of Congress to enact laws for the control of the elections of United States Senators and Representatives of the United States, found in *United States v. Gradwell* (243 U. S., 476.) That, of course, has nothing to do with this case, because that relates to elections in States, but it is a general outline of the power of Congress over elections of that kind, and I cite it merely for that purpose.

Alaska is a territory purchased by the Government of the United States from Russia in 1867 by a treaty of cession of 1867, and in that treaty as in the treaties of Florida and in the purchase of the Mexican districts, etc., the rights of the inhabitants who remained in the territory after the purchase were fixed. The treaty of 1867 with Russia provides that all of those inhabitants, Russian citizens, who remained in the Territory for three years after the purchase of the country shall become citizens of the United States, and specifically provides that they shall have all the rights, privileges, and

immunities of any other citizens of the United States. It is substantially the same form of expression, the same words almost identical, and the same idea as you will find in the treaty for the purchase of the Floridas and the Mexican Provinces of 1848.

Now, I call that to your attention because that will be interesting in one other feature of this case later along.

Alaska, of course, being a Territory, is under the power of Congress. We have no State government. We have no elective officers except under an act of Congress we elect our legislature, and since the creation of the legislature that body has provided for the election of the attorney general of the Territory. Otherwise all our officials of the Territory are appointive.

Mr. ROWAN. There is only one elective officer outside of the representative?

Mr. WICKERSHAM. I think that is all, the attorney general, except the legislature; yes.

Now, the Supreme Court of the United States in a number of cases has determined very fully what power the Congress of the United States has over Territories, and I have cited, on page 8, the leading case, *National Bank v. County of Yankton* (101 U. S., 129), and I have quoted from that authority from page 133, and I have quoted it because it gives you a very definite idea of the power of Congress over the Territories.

Among other things, it is said:

The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

Now, this case also decides this point:

Congress may not only abrogate laws of the territorial legislatures but it may itself legislate directly for the local government; it may make a void act of the legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States.

In other words, the Congress creates the legislature of the Territory of Alaska. Congress created the office of Delegate to Congress and may abolish it at any moment. We are absolutely governed fundamentally by Congress. But Congress in Alaska and all the other Territories has created the territorial legislature. But in creating the territorial legislature it always fixed the limits of the power of the legislature, and the legislature can not go beyond the powers given it by the organic act of its creation. That organic act passed by Congress is now the constitution of Alaska.

Now, in the case of *Binns v. United States* (194 U. S., 486), a case coming from Alaska, these matters are considered in direct relation to Alaska, and substantially the same principle is laid down in that case as is laid down in the national-bank case which I have just mentioned.

Mr. ELLIOTT. Mr. Wickersham, your contention is this, that the Territorial Legislature of Alaska has only such legislative powers as are granted it expressly by Congress?

Mr. WICKERSHAM. Yes; that our own court has held, and that has always been the rule. Congress has complete control over all officials in the Territory of Alaska.

The Utah case is the leading case on that question, the case of *Ferris v. Higley* (87 U. S., 375), which arose in the Territory of Utah over a conflict between an act of the legislature and the organic act. I want to read that. It is very short. The Supreme Court said on this point, the italics being mine. [Reading:]

There remains, then, only the further inquiry whether it is inconsistent with any part of the organic act itself. That act established a complete system of local government. *It stands as the constitution or fundamental law of the Territory.* It provides for the executive, legislative, and judicial departments of government. It prescribes their functions, their manner of appointment and election, their compensation, and tenure of office. In regard to the judiciary, it creates the courts, distributes the judicial power among them, and provides all the general machinery of courts, such as clerks, marshal, prosecuting attorney, etc. It is here, then, if anywhere, that we should look for anything inconsistent with the power conferred on the probate courts by the Territorial legislature. * * * *The act of the Territorial legislature conferring general jurisdiction in chancery and at law or the probate court is, therefore, void.*

The two acts, the Territorial act and the act of Congress, conflicted, and for that reason the Territorial act was void.

Then, again, in the case of *Clayton v. Utah Territory* (132 U. S., 632) the Supreme Court again considered the rule in the *Ferris* case and said. [Reading:]

Under the organic act of that Territory the power to appoint an auditor of public accounts is vested exclusively in the governor and council; so much of the acts of the legislature of Utah of January 20, 1852, and February 22, 1878, as relates to the mode of appointing an auditor of public accounts is in conflict with the organic act, and is invalid.

In the leading case from the Alaskan courts touching the legislative powers of Congress and the Territorial legislature, the court held that while Congress had plenary legislative power in Alaska and could legislate therein on all rightful subjects of legislation not prohibited by the National Constitution, necessarily the other more limited rule applied to the power of the local legislature. The court said:

Having this power, Congress certainly had the power to confer it upon the legislature. It is true that the powers of that legislature are limited by the act defining those powers, and that in this respect a Territorial legislature differs from State legislatures; that is to say, the organic act of a Territory is a grant of specific powers and not a reservation of specific powers.

This was decided by Judge Jennings in the Fifth Alaska Report, 325.

The court then pointed out that if the organic act created the Alaska Legislature, Congress withheld a wide range of legislative powers from that body in the granting clause, which begins with these words:

The legislative power of the Territory shall extend to all subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed, etc.

So that it follows with respect to the organic act passed by the Congress for the creation of a government in Alaska and creating the Territorial legislature, that that legislature has no authority except that authority which is expressly given to it, and it also follows that

it has no authority to pass such a law which shall be in violation of the Constitution of the United States or the laws of the United States. Congress may to-morrow abolish the Legislature of Alaska and take away all of its powers. It may take away its powers, it may modify them, expand them, or limit them. Congress is supreme in the matter of passing legislation for the Territory of Alaska. I call your special attention to that particular clause in the organic act of 1912 giving legislative power to the Territory of Alaska, and that it provides "that the legislative power shall extend to all right-ful subjects of legislation not inconsistent with the Constitution and laws of the United States."

It follows that the Legislature of Alaska can not enact any legislation which is "inconsistent with the Constitution and laws of the United States"—that is, inconsistent with the organic act of Alaska. That is our constitution. Our constitution is merely a law of the United States passed by Congress creating our legislature and giving it certain limited authority.

Now, Congress passes election laws, of course, for all the Territories. There is no constitutional provision that Alaska shall have a representative in Congress. A Delegate is not a constitutional officer. Only Representatives and Senators are constitutional legislative officers. A Delegate from the Territory is created by an act of Congress. We did not have a Delegate in Alaska from 1884 until 1906. For all those years Alaska was a Territory, an organized Territory, but had no Delegate in Congress, and not until Congress itself passed the act of 1906 did we have any Delegate from the Territory of Alaska, and not until 1912 did we have a Territorial legislature. From 1884, when our government was first created by an act of Congress, we had no legislative body, no law-making body in Alaska until 1912.

Now, a very interesting case arose in Utah with respect to the power of Congress over these Territorial officials, over the right to the people in a Territory to vote, and over the power of Congress to control both the elective branches in the Territory and the election of officers, and I have quoted here some part of it and I want to read it to this committee so that you will get the view that I want kept in mind all the time, that Alaska is a Territory, and that we are greatly limited in our form of legislative government, and that you, the Congress, is the supreme legislative body for Alaska.

Mr. ROWAN. Is there any dispute on that point?

Mr. WICKERSHAM. No; but I want to make it clear, because the case very largely rests on that.

Mr. HUDSPETH. Do I understand you that Congress passed a specific act granting the right of the Territory of Alaska to have a legislature?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. And it also passed another specific act granting a Delegate in Congress?

Mr. WICKERSHAM. Yes; and passed a specific act giving the classification of voters, and that of course is going to be the point in this case very largely.

Mr. ELLIOTT. And it also passed an election law?

Mr. WICKERSHAM. It also passed an election law.

Mr. ELLIOTT. And, as I understand, your contention is here, as part of your case, that this legislature was called in special session and

enacted a law to govern the election of Delegates to fill vacancies, and that that law you claim is illegal?

Mr. WICKERSHAM. Illegal, unconstitutional, and void.

Mr. ELLIOTT. Because it had no power to pass it?

Mr. WICKERSHAM. Yes. I want to call attention to the case of *Murphy v. Ramsay* (114 U. S., 15).

Mr. ROWAN. What page?

Mr. WICKERSHAM. Page 10. In that case it is said. [Reading:]

The counsel for the appellants in argument questioned the constitutional power of Congress to pass the act of March 22, 1882, so far as it abridges the rights of the electors in the Territory under previous laws.

Previously they had a very much wider range of election rights than they had had before this law of Congress. [Reading:]

It has passed beyond the stage of controversy into final judgment. The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. In the exercise of this sovereign dominion they are represented by the Government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied in its terms, or in the purposes and objects of the power itself, for it may well be admitted in respect to this, as to every power of society over its members, that it is not absolute and unlimited. But in ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory and the qualification of those who shall administer it. It rests with Congress to say whether, in a given case, any of the people, resident in the Territory, shall participate in the election of its officers or the making of its laws; and it may therefore take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient. "The right of local self-government is known to our system as a constitutional franchise, belongs, under the Constitution, to the States and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the Government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and National; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States.

That is a point that I want to get clear to this committee. This doctrine was fully and forcibly declared in the case of *National Bank v. County of Yankton* (101 U. S., 129), to which I called your attention, and then the court gives attention to other cases along the same line.

Now, in addition to that case, they had in Utah an organic act which provided for the election of the Territorial officers and Congress was not satisfied with the officers. Something got the matter out in Utah—it was Mormonism, of course—and Congress passed another law repealing that organic act of Utah Territory, and providing for a full election of all the Territorial officials, but with certain provisions against the voting of Mormons and others, and there was a question which was presented to the Supreme Court of the United States in this case, and the Supreme Court held in the case that Congress had full authority to legislate in that matter. So it is in Alaska. Our franchise up there we hold as privileges given to us by the specific act of Congress. Congress may take them away from us. Congress may place any limitation it pleases upon

them, and we are bound by them, and our legislature has no authority at any time to pass any law in opposition to the organic act creating the Territory and limiting our franchises.

Now, Congress, as I say to you, passed two election laws for Alaska. The first was the act of May, 1906, and it is important in this case that you gentlemen should get a very clear view of that act, because it is the act providing for the Delegate to Congress from Alaska. It is the organic act of Alaska providing for the election of the Delegate. It is the constitution of Alaska so far as it goes. It is the organic act which controls the people of Alaska in the matter of that election, and the Territorial legislature has no authority. Although it was created by a subsequent act it has no authority to alter, amend, modify, or repeal that act of Congress.

Now, this act was passed and approved May 7, 1906, and I am going to call your attention to two or three sections of it because it is necessary for you to get that view.

Section 1 provides—it will be found, Mr. Chairman, in the Thirty-fourth Statutes at Large, beginning on page 169—"That the people of the Territory of Alaska shall be represented by a Delegate to the House of Representatives of the United States chosen by the people thereof in the manner and at the times hereinafter prescribed, and who shall be known as the Delegate from Alaska." Prior to the passage of that act we had no Delegate from the Territory of Alaska, although it had been an organized Territory from 1884 down to 1906, and we got the right to elect a Delegate only by this act. Then it provides that the Delegate at the time of his election shall have been for seven years a citizen of the United States, provides his qualifications and his compensation and allowance for mileage, etc.

Section 2 of the act provides for the first election of the delegate. The bill was passed at a time when it seemed necessary to elect the first delegate for one year, for a portion of a term, and the act provided for the election of two men at that time, one to serve for one year for the unexpired term in that Congress, and thereafter the election of another man, beginning with the subsequent Congress and running through the two years. Section 2 provides for those first elections and provides the terms and the salary.

And then section 3 of this act follows, and that fixes the qualifications of voters. I beg the attention of the committee to that particular section, because it will be your standard and your guide all the way through this case. That section provides that—

All male citizens of the United States 21 years of age and over who are actual and bona fide residents of Alaska, and who have been such residents continuously during the entire year immediately preceding the election, and who have been such residents continuously for 30 days next preceding the election in the precinct in which they vote, shall be qualified to vote for the election of a Delegate from Alaska.

There has been no change or modification of that law by Congress except this, that when the act of 1912 passed—the act creating the Territorial legislature—there was a clause in that which gave the Territorial legislature authority to extend the voting franchise to women, and an act of the Territorial legislature after the passage of that act of 1912 provided for extending the franchise to women. But with that exception there has never been any change in this section, and it is the standard for the determination of the rights of suffrage in the Territory of Alaska.

I call your attention now to two clauses in this section, with respect to residence, because they are important: That he must first be an actual and bona fide resident of Alaska. And then it provides that he shall have been such a resident continuously during the entire year immediately preceding the election. That is probably stronger language than you will find in almost any other statute in the United States—"and who have been such residents continuously for the 30 days next preceding the election in the precinct in which they vote."

Now, those are the qualifications for an elector in Alaska, and the legislature has no authority at any time to change those qualifications. About that, of course, there is no controversy. Mr. Grigsby and I agree that the legislature has no authority to change those qualifications, and there is no authority for any person voting in the Territory of Alaska who has not resided continuously in the Territory for one year immediately preceding the date of the election and for 30 days immediately preceding the date of the election in the precinct.

Mr. ROWAN. Assume this, for instance, that you have not given up your residence in Alaska, that you had not been there, but that your residence was there. It does not mean your actual physical presence, does it?

Mr. WICKERSHAM. No; because he might be away on the business of the Territory.

Mr. ROWAN. Or on his own business.

Mr. WICKERSHAM. Or temporarily on his own business. The usual rule applies on that. You and I agree on that. I do not know what the court would hold about it, because there is strong language that you must reside there continuously for a year immediately preceding and continuously for 30 days next preceding the election in the precinct in which they vote.

Mr. ELLIOTT. Mr. Wickersham, I notice in reading the record of testimony that some of these parties have injected this proposition into this case: That Alaska was divided into divisions and that these divisions contained several precincts, and that if some fellow was absent from his precinct at the date of election and could not get back, that he was entitled to vote in the precinct where he was. Is that right?

Mr. WICKERSHAM. That is one on the questions that I am going to present to you, because the legislature passed a law of that kind. Mr. Grigsby and I both agree to that extent, that that law is null and void, and that the legislature had no such authority. In other words, the legislature could not alter the constitution, the organic act of its creation.

Mr. ELLIOTT. Do I understand, Mr. Grigsby, that you do not contend that that law is valid?

Mr. GRIGSBY. Well, I have never contended that it was valid, Mr. Elliott. I rendered an opinion that the legislative act changing the residential requirements was void, and I do not know any reason yet to change my mind.

Mr. ELLIOTT. If that question is not going to come up——

Mr. WICKERSHAM. I think we might as well settle it. You will find Mr. Grigsby's opinion on page 17 of this brief.

Mr. HUDSPETH. Have you a supreme court in Alaska?

Mr. WICKERSHAM. No; all of our appeals of the four district courts in Alaska go to the ninth circuit at San Francisco.

Mr. ELLIOTT. Your courts are all Federal courts?

Mr. WICKERSHAM. Yes; created by an act of Congress, given their jurisdiction by an act of Congress, and our judges have all the powers of the United States district and circuit judges. In addition, they have the power given to them by the organic acts creating the courts.

Mr. HUDSPETH. This question of voting and the residence of the voter in the precinct has never been passed on by your higher court of appeals?

Mr. WICKERSHAM. Oh, yes; I think it has been.

Mr. HUDSPETH. What did it hold?

Mr. WICKERSHAM. They could not hold but the one way, Mr. Hudspeth.

Mr. HUDSPETH. The reason why I am asking this question is that in our constitution in Texas it provides that you can only have State prohibition by a vote of the people, yet the legislature passed a statutory prohibition act that the higher court held invalid.

Mr. WICKERSHAM. You will find Mr. Grigsby's opinion on page 17.

Mr. GRIGSBY. Excuse me a minute. Mr. Elliott, I would like to reserve my position on the law points at present and not bind myself by anything. My position up to the time of this contest was as Mr. Wickersham states.

Mr. WICKERSHAM. Now, Mr. Chairman, section 4 of this act of 1906 provides for election districts in Alaska, and provides that every incorporated town, for instance, shall be an election district or precinct, and permits the town authorities to divide the town into precincts if they see fit, if there are enough votes, and they frequently do that.

Mr. ROWAN. Does it provide the method of establishing precincts within an incorporated town?

Mr. WICKERSHAM. It provides this [reading]:

SEC. 4. That each incorporated town in the district of Alaska shall constitute an election district, and where the population of such town exceeds 1,000 inhabitants the common council may, in their discretion, at least 30 days before the election, divide the district into two or more voting precincts and define the boundaries of each precinct.

And then this section provides that the common council shall appoint election officers of the town and provides for polling places and for giving notice of the election, etc.

Then section 5 of the act provides. [Reading:]

That all of the territory in each recorded district now existing or hereafter created situate outside of an incorporated town shall, for the purpose of this act, constitute one election district; that in each year in which a delegate is to be elected the commissioner in each of said election districts shall, at least 30 days before the day of said election, and at least 60 days before the date of each subsequent election, issue an order and notice, signed by him.

In which such order and notice he shall create the voting precinct, and that he shall give the election notice and that publication shall be made, and that he shall appoint the judges of election, etc.

Now we have in Alaska recorders appointed in the recording precincts of recording districts and each commissioner is a recorder.

The commissioner is the recorder, or the justice of the peace, probate judge, and the general public knows beforehand——

Mr. ROWAN. By United States statute?

Mr. WICKERSHAM. By United States statute. And in his recording district he is permitted to control, and in the voting precincts, while in the incorporated towns the town council does it. Those are the two authorities that make voting precincts in Alaska. The common council has charge of it in incorporated towns, of which there are 10 or 12, and the commissioners in the recording districts, of which we have about 40 or 50, in round numbers. Those are the authorities that are authorized by United States statute to cut up the country into voting precincts; nobody else has any authority.

Now, section 6 provides that "the judges of election of each voting precinct shall constitute the election board for such precinct, and shall supervise and have charge of the election therein. They shall secure and provide a place for holding the election and a suitable ballot box," etc.

And it provides that the members of the board shall take an oath and they shall administer oaths to voters when it is necessary. And further on it provides that the two or three judges of elections in each voting precinct, outside of the incorporated towns, to be selected by a majority of said judges, shall also perform the duties of clerks of the election for that precinct. It provides for the election officers, in other words.

Section 7 of this act provides for watchers at the polls. It provides that Mr. Grigsby, if he is a candidate for Delegate, and I, if I am a candidate, may appoint in each voting precinct one of our friends to go there and act as a watcher. It provides that he shall have a prominent place in the polling place, and shall have as much right there as the election officers, and shall challenge voters and see that no fraud is committed by the other side. It is a man to watch the other side.

The next section, section 8, provides for filling vacancies on election day. If election officers meet and there is not a sufficient number of them there the bystanders may elect a sufficient number to act as officers.

Section 9 is important in one particular point in this case, and I will read that part of it. [Reading:]

That the election boards herein provided for shall keep the several polling places open for the reception of votes from 8 o'clock antemeridian until 7 o'clock postmeridian on the day of election. The voting at said election shall be by printed or written ballot.

And then it describes a general outline form of ballot to be used, and the section also provides how the ballot shall be folded and put in the ballot box, and that a register shall be kept at the time of the votes. When you come up to vote in Alaska you are given a ticket, you are registered, you write your name down on the register, and "at the time the ballot is so deposited the clerks of the election shall each of them enter in his duplicate register the name of the voter and the fact that he has voted."

The man himself does not register, but the clerk registers him. I think they generally register themselves, though.

Mr. ROWAN. What have you to say for the form of the ballot?

Mr. WICKERSHAM. There is the form right there.

Mr. ROWAN. Would any other form be illegal?

Mr. WICKERSHAM. I think so.

Mr. ROWAN. Then, the form is "For Delegate from Alaska," with the name written or printed in after it?

Mr. WICKERSHAM. Yes. I think the legislature has no authority in the premises. I think this act is exclusive and that the legislature has no authority.

Mr. ROWAN. Could that ballot for Delegate for Alaska under this law form part of the general policy?

Mr. WICKERSHAM. Possibly.

Mr. ROWAN. Would not that in some way make a change in this law?

Mr. WICKERSHAM. Possibly. That, however, I think is not very material in this case, although our legislature did pass what they call an Australian ballot law; and that will be called to your attention later.

The CHAIRMAN. You voted under the Australian ballot law of the Territory?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. The ballots were cast under that law?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. Does this act of Congress prescribe the form of ballot?

Mr. ROWAN. It does here.

Mr. WICKERSHAM. It does here.

Mr. O'CONNOR. And you hold that the Legislature of Alaska has no power to amend it?

Mr. WICKERSHAM. Absolutely none; no more than Congress can change the Constitution of the United States by passing some laws in violation of it.

Mr. O'CONNOR. The legislature did provide for an Australian ballot?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. Is that contrary to law?

Mr. WICKERSHAM. Yes; I think anything with respect to the management of the election law is a violation of this act.

Mr. HUDSPETH. But the election between yourself and Mr. Sulzer took place under the Australian ballot system.

Mr. WICKERSHAM. It did.

Mr. HUDSPETH. Do you contend that the election was void?

Mr. WICKERSHAM. Not at all.

Mr. ROWAN. Was the law complied with?

Mr. WICKERSHAM. Substantially, yes; in that respect. I am not making any point here against the form of ballot, because it would become necessary to consolidate the ballot and vote for other officers after the creation of the Territorial legislature, and I am not making any objection to the form and the policy.

Mr. ROWAN. It seems to me that that is a change of the organic law.

Mr. WICKERSHAM. It may be; and I quite agree with you that the legislature has no right to change the organic act.

Section 10 of this act provides "That any person offering to vote may be challenged by any election officer or any other person entitled

to vote at the same polling place, or by any duly appointed watcher, and when so challenged, before being allowed to vote he shall make and subscribe to the following oath." Now, we are going to have some charges of false swearing here, and I want you to give attention.

Mr. ROWAN. What section?

Mr. WICKERSHAM. Section 10 of this act; and you will find it mentioned there on page 11 of my brief.

Here is the oath. [Reading:]

You do solemnly swear (or affirm, as the case may be) that you are 21 years of age and a citizen of the United States; that you are an actual and bona fide resident of Alaska, and have been such resident during the entire year immediately preceding this election, and have been a resident in this voting precinct for 30 days next preceding this election, and that you have not voted at this election.

Then the law goes on. [Reading:]

And further naming the place from which the voter came immediately prior to living in the precinct in which he offers to vote, and giving the length of time of his residence in the former place.

Now, here is a peculiar clause, and I want you to listen to this. [Reading:]

And when he has made such an affidavit he shall be allowed to vote.

It may be untrue, but it does not make any difference whether it is true or false; and it may be that the election officers know that it is not true, and that it is false, but they have no right to stop him if he makes oath.

Mr. CHINDBLOM. You have similar laws in the States. For instance, if a man's vote is challenged, he can bring in two householders who vouch for him, and then he can vote. If he commits perjury, he can be prosecuted.

Mr. WICKERSHAM (reading):

And any person swearing falsely in any such affidavit shall be guilty of perjury.

Now, section 11 provides that the election board, as soon as the polls are closed, shall immediately proceed to open the ballot boxes and count and canvass the votes cast, and they shall thereupon make out certificates in duplicate, and one shall be sent to the Governor and one to the clerk of the court in the division. They send out two copies of the election returns, one forwarded directly to the governor of the Territory and the other one to the clerk of the court in the division. We have four divisions in Alaska, four United States courts in Alaska, four United States judges, four United States marshals, four United States district attorneys—four complete sets of court officials; and this law provides that one of those returns in the division should be sent to the clerk of that division who files it in the court, so that we have two sets of these returns.

Section 12 provides that the governor, the surveyor general, and the collector of customs for Alaska shall constitute the Territorial canvassing board to canvass and compile in writing the votes specified in the certificates of election returned to the governor from all the several election precincts. It provides that they shall canvass the results of the election and shall make a certificate of the results of the election and the declaration of the results, and shall is-

sue a certificate of election to the person who is elected to the legislature and to Congress and give him that certificate.

Mr. ROWAN. Does it require him to examine the ballots?

Mr. WICKERSHAM. No.

Mr. ROWAN. Only in the case of protest?

Mr. WICKERSHAM. What it says about the matter is that the canvassing board shall canvass and compile in writing the votes specified in the certificates of election.

Mr. ROWAN. A compilation?

Mr. WICKERSHAM. A compilation.

Section 13 provides for the giving of a notice by publication in the newspapers.

Section 14 provides for the compilation of the expenses of the election.

Section 15, being the last section in the act, provides the penalty for violation of all of its clauses, and these penalties are very strict and cover almost every phase of fraud that can be perpetrated at an election. Anyone who by any means delays or procures the delay of the returns of election, or if he votes illegally, or if an election officer violates any duty imposed upon him, they are all to be punished as required by this act.

Now, that is the election law passed by Congress in 1906, and it is under that act that our elections are held in the Territory of Alaska.

In 1912 we passed what is known as the organic act of Alaska, creating the Territorial Legislature of Alaska. That will be found in Thirty-seventh United States Statutes at Large, beginning at page 512.

The first section of that act provides that the territory ceded to the United States by Russia by the treaty of March 13, 1867, shall be and constitute the Territory of Alaska, etc.

Section 2 establishes the capital of the Territory at Juneau.

Section 3 provides that the Constitution of the United States and all the laws thereof which are not locally inapplicable shall have the same force and effect in the said Territory as elsewhere in the United States, and that all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue in full force and effect, etc., and then it goes on and provides for the creation of the Territorial legislature.

Section 4 provides that the legislative power and authority of such Territory shall be vested in the legislature, which shall consist of a senate and a house of representatives, and then it goes on and provides for their terms and for filling vacancies, pay, mileage, etc.

Section 5 provides for elections—

That the first election for members of the Legislature of Alaska shall be held on the Tuesday next after the first Monday in November, 1912, and all subsequent elections for the election of such members shall be held on the Tuesday next after the first Monday in November biennially thereafter.

I want to call attention to what follows, "That the qualifications of election officers, the supervision of elections, the giving of notices thereof, the forms of ballots, the register of votes, the challenging of voters, and the returns and the canvass on the returns as the result of all such elections for members of the legislature shall be the same as those described in the act of Congress entitled 'An act providing

for the election of a Delegate to the House of Representatives from the Territory of Alaska,' approved May 7, 1906—"which is the act that I have just been reading to you—"and all the provisions of said act which are applicable are extended to said elections for members of the legislature, and shall govern the same, and the canvassing board created by said act shall canvass the returns of such elections and issue certificates of election to each member elected to said legislature; and all the penal provisions contained in section 15 of the said act shall apply to the elections for members of the legislature as fully as they now apply to elections for Delegate from Alaska to the House of Representatives."

So that the whole of that act of 1906 is made a part of the act of 1912 so far as the election of members of the legislature is concerned.

The next section provides for the convening of the sessions of the legislature.

The next one for the organization of the legislature.

The next one, No. 8, provides as follows [reading]:

That the enacting clause of all laws passed by the legislature shall be, "Be it enacted by the Legislature of the Territory of Alaska." No law shall embrace more than one subject, which shall be expressed in its title.

Now we come to the limitations of the powers of the legislature. Section 9 [reading]:

The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, etc.

And then follows a long list of limitations upon the power of the legislature.

Mr. GRIGSBY. May I ask a question right there?

Mr. WICKERSHAM. Yes.

Mr. GRIGSBY. Why is the limitation expressed there "not inconsistent with the Constitution and laws of the United States"? Do you consider that that refers to the laws of the United States relating to Alaska or to the general laws of the United States?

Mr. WICKERSHAM. To both, I think.

Mr. GRIGSBY. To both?

Mr. WICKERSHAM. I have not thought about that. I am like you about that; I would like to reserve my opinion that I might have on that. But it strikes me so at first thought. It is up to the committee.

Now, at the end of this section No. 9 is this clause [reading]:

And all laws passed, or attempted to be passed, by such legislature in said Territory inconsistent with the provisions of this section shall be null and void.

So that if the legislature undertakes to pass any act inconsistent with the Constitution and laws of the United States or inconsistent with any of these reservations made by Congress in this section 9, this section declares that such laws shall be null and void. There is no question about that.

Then a proviso is added [reading]:

Provided further, That nothing herein contained shall be held to abridge the right of the legislature to modify the qualifications of electors by extending the elective franchise to women.

That is where you get that right. This act goes on in the next section to create certain legislative rules, and section 11 provides that a legislator shall not hold any other office.

Section 12 provides for exemptions of legislators, that they shall not be held to answer before any other tribunal for any words uttered in the exercise of legislative functions.

Section 13 relates to the passage of laws.

Section 14 provides for the veto power.

Section 15 provides for the payment of expenses.

Section 16 provides that the law shall be transmitted to the President and to Congress.

MR. CHINDBLOM. Before you get to section 17, which is directly in point, it strikes me that the grant of powers to the legislature with reference to the subjects of legislation is plenary.

MR. WICKERSHAM. Undoubtedly.

MR. CHINDBLOM. That the legislature of Alaska has full power to legislate on all subjects except as limited by the act. Was not that the effect of the language?

MR. WICKERSHAM. Judge Jennings has held just the opposite in the case I called your attention to. He holds that the legislature has no authority except that which is given to it; that it is a grant of powers.

MR. CHINDBLOM. It is a grant of power, but does not that grant include every subject of legislation except those specifically prohibited in the grant?

MR. WICKERSHAM. There are many prohibitions that I have not mentioned.

MR. CHINDBLOM. But if you find no prohibition against the exercise of any particular power, then that act, which you are reading, grants the Legislature of Alaska the authority to legislate upon that subject.

MR. WICKERSHAM. It is granted a very wide range of power; there is no doubt about that.

Section 17 provides for the election of delegates. Here we have a reference to the act of 1906 again, and I want to read this section. This makes a change in the time of holding elections. Under the act of 1906 the elections were held in August, and by this section the date of holding the election is changed from August to November, at the date of the regular elections. [Reading:]

That after the year 1912 the election for Delegate from the Territory of Alaska provided by "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, shall be held on the Tuesday next after the first Monday in November in the year 1914, and every second year thereafter on the same Tuesday next after the first Monday in November, and all of the provisions of the aforesaid act shall continue to be in full force and effect and shall apply to said election in every respect as is now provided for the election to be held in the month of August therein: *Provided*, That the time for holding an election in said Territory for Delegate in Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of the person elected, may be prescribed by an act passed by the Legislature of the Territory of Alaska: *Provided further*, That when such election is held it shall be governed in every respect by the laws passed by Congress governing such elections.

In other words, the purpose of this section was to change the date from August to November, and then merely to provide that the elec-

tion law of 1906 should govern, except that the right is given to the Territorial legislature to fix the time for holding a special election and providing that when the legislature fixes that time then that election shall be held under the general law.

Now, that section is going to be important in this matter also.

Then section 18 simply provides for the creation of a board of road commissioners of the Territory and section 19 for a codification of the laws, and section 20 of the act, and the last section, provide that all laws passed by the Legislature of Alaska shall be submitted to Congress by the President of the United States, and, if disapproved by Congress, they shall be null and of no effect. But, of course, until they are disapproved they are valid, if they are within the power of the legislature to pass.

Now, those, gentlemen, are the two organic acts of Alaska providing for the election of Delegates of Alaska, and those are the only acts. There is no other law giving the Territory of Alaska or any officer of the Territory of Alaska any authority or right to hold an election for Territorial Delegate except those two.

Mr. CHINDBLOM. I suppose you are coming to the question of the legality of calling the special election?

Mr. WICKERSHAM. Not until the last thing.

Mr. CHINDBLOM. I do not mean to bring it up at this point.

Mr. WICKERSHAM. Now, what I am trying to make this committee understand is this, as you will see on page 13 of my brief, that Congress is the supreme lawmaking body in Alaska.

Second, it created and may abolish the office of Delegate.

Third, it created and may abolish the Alaska Legislature.

Fourth, its acts creating these agencies are organic and stand as the constitution of Alaska.

Fifth, the Legislature of Alaska has only those limited powers of legislation granted to it by those organic acts, and it has those as fully as they are granted.

Sixth, that Congress expressly withheld from the Legislative Assembly of Alaska any power to alter, amend, modify, or repeal the organic act of May 7, 1906, providing for the election of a Delegate to Congress from Alaska, by declaring in section 17 of the act of August 24, 1912, creating the legislature, that "all of the provisions of the aforesaid act shall continue to be in full force and effect and shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein." And Congress also expressly withheld from the Legislative Assembly of Alaska any power, authority, or control over a special election to fill a vacancy in the office of Delegate to Congress by declaring in the said section 17 of the said act of August 24, 1912, creating the legislature, that the legislature should have power to fix the time for holding such special election, but "when such election is held it shall be governed in every respect by the laws passed by Congress governing such election."

Eighth, that the act of May 7, 1906, providing for the election of a Delegate to Congress from Alaska, is the organic act—the constitution of Alaska, the sole and only law or power under which such election can be held, because, while it is referred to in the act of 1912, it is merely reaffirmed by that act of 1912.

Ninth, and finally, any attempt by the Legislature of Alaska, by enactment or otherwise, directly or indirectly, to alter, amend, modify, or repeal the organic act providing for the election of a delegate from Alaska is ultra vires, null and void, and in direct violation of the express reservation of that power withheld in the organic act—the constitution of Alaska.

Now, notwithstanding these strict provisions of the law, the local legislature did pass in 1915 an act called the Australian ballot law. I want to call your attention to that just a moment. Mr. Grigsby somewhere in his brief gives considerable credit to Mr. Sulzer for having passed that law. As a matter of fact, Mr. Sulzer had nothing to do with it. That law was prepared by a Member of the House, and I have it right here on page 55 of the session laws of Alaska for 1915, being the second session. You will notice at the top of it—it is “H. bill No. 1”—it was introduced in the house, and from section 1 to section 23 (I think it is) the act is just as it was introduced in the house of representatives, in the lower house, by Mr. Driscoll, from the interior of Alaska. It was passed by the house and then went to the senate, and there I do not know whether or no Mr. Sulzer may have had something to do with it—I suppose he did.

In the senate they attached the sections from section 24 to section 40, those amendments, a whole lot of amendments that had nothing to do with the Australian ballot system in any shape or manner, and sent it back to the lower house.

Mr. ROWAN. What is the title of the act?

Mr. WICKERSHAM (reading):

An act to provide official ballots for the elections in the Territory of Alaska.

But all these other clauses relate to many other things, inducing Indians to vote, nonfeasance or malfeasance of election officers, fraudulent voting, attempting to influence voters, disqualified voters, bribery or influencing voters, and all that kind of thing. The bill was passed in that shape.

Mr. O'CONNOR. And in that shape it is an amendment to the organic law.

Mr. WICKERSHAM. The senate amendments were left on there.

Mr. O'CONNOR. Let me ask you, where did the women of Alaska get their right to vote?

Mr. WICKERSHAM. From that clause in the Federal act of 1912, which read, “*Provided*, That the Territorial legislature may extend the franchise to women.”

Mr. O'CONNOR. And they did that?

Mr. WICKERSHAM. And they did that.

Mr. O'CONNOR. And they voted in this Sulzer election?

Mr. WICKERSHAM. Yes; in all elections. They vote in all the elections.

Mr. CHINDBLOM. I presume your contention is that that merely added one further class of voters to section 3 of the act of 1906?

Mr. WICKERSHAM. Yes, sir; but with the same qualifications, of course, as those of other voters.

Now, as to whether or not this act of 1915 is valid or void, it is an attempt to change the qualifications of voters. On page 17 of my brief, you will find a portion of Mr. Grigsby's opinion on February 11, 1919, which I have here in his official report, and in his official

report it is held—I can not find it just for the moment. But it is in his official report.

Mr. ROWAN. What was that provision in the organic act in regard to any law that tried to cover more than one subject being declared null and void?

Mr. WICKERSHAM. This act is null and void for that reason.

Mr. GRIGSBY. The language of the act does not say that it shall be null and void, it simply prohibits it.

Mr. WICKERSHAM. Prohibits it; and of course it being a prohibition, it makes it null and void if it is violated.

Mr. Grigsby, in his opinion, said——

The CHAIRMAN. Just a minute. That last sentence, “becomes null and void because it is prohibited.” You mean, if I understand the reading of it, that if any law is passed that is in conflict or rather that is prohibited, it therefore becomes null and void. That is your proposition?

Mr. WICKERSHAM. Yes.

Section 8 provides—

That the enacting clause of all laws passed by the Legislature of the Territory of Alaska shall be, “Be it enacted by the Legislature of the Territory of Alaska.” No law shall embrace more than one subject, which shall be expressed in its title.

At the end of section 9 is this clause:

And all laws passed or attempted to be passed by such legislature in said Territory inconsistent with the provisions of this section shall be null and void.

Now, I read those two sections together, and whether the words “null and void” are added there or not, it has the effect.

Mr. O’CONNOR. We have that provision in the constitution of Louisiana, that the act must not contain anything inconsistent with the carrying out of the objects and purposes——

Mr. WICKERSHAM. That is fairly within the general——

Mr. GRIGSBY. That is germane.

Mr. WICKERSHAM. That is covered fairly by the title.

Mr. CHINDBLOM. That, of course, is always a question for the Supreme Court.

Mr. WICKERSHAM. This is the Supreme Court that I am talking to now, as far as this case is concerned.

In that opinion Mr. Grigsby says [reading]:

This section of the organic act (which is the constitution of Alaska) continued in force all of the provisions of the act of May 7, 1906, above referred to, including the provisions fixing the qualifications of electors for the office of Delegate from Alaska.

The qualifications of electors for members of the legislature are fixed by section 5 of the organic act, as follows:

“That the qualifications of electors, the regulations governing the creating of voting precincts, the appointment and qualifications of election officers, etc., shall be the same as those prescribed in the act of Congress entitled ‘An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska,’ approved May 7, 1906.”

Thus it will be seen that the qualifications of electors of general elections in Alaska are fixed by our organic act.

The Legislature of Alaska of 1915, in chapter 25 of the session laws of Alaska, 1915, attempted to change the qualifications of voters with respect to the residence required. Section 22 of said chapter provides, in effect, that any person of the age of 21 years, or more, who is a citizen of the United States, who has

liver in the Territory of Alaska one year, and in the judicial division in which he or she offers to cast his or her vote 30 days immediately preceding such election, shall be entitled to vote at all elections held therein.

I have to advise you that the legislature in attempting to change the qualifications of voters by this act, exceeded its powers, the qualifications having been fixed by the act of May 7, 1906, and continued in full force and effect by the organic act or constitution of Alaska. The organic act expressly authorized the legislature to extend the elective franchise to women but in no other way authorized the changing of the qualifications of electors by the legislature.

Respectfully submitted,

GEORGE B. GRIGSBY, *Attorney General*.

Mr. HUDSPETH. What effect would that have, his opinion as attorney general?

Mr. WICKERSHAM. It only shows that he and I agree on what the law is.

Mr. HUDSPETH. Just like two other good lawyers?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. When was that opinion rendered?

Mr. WICKERSHAM. February 11, 1919, rendered to the governor on request for an opinion upon that very question.

Mr. Grigsby in his report of March 1, 1919, to the governor, takes up the question of the election law and gives a further opinion. It is on page 18 in his report. I have it right here. He says:

The election law passed by the legislature of 1915 (chapter 25, Sessions Laws of Alaska, 1915), entitled "An act to provide official ballots for elections in the Territory of Alaska," should either be amended or an entire new election act enacted. The act is defective in the following particulars:

1. Its scope is much broader than its title, which is contrary to the provisions of the organic act. It contains, in addition to the subject expressed in its title, to-wit, "To provide official ballots for elections in the Territory of Alaska," a provision for registration, a provision changing the qualifications of voters, and numerous provisions characteristic of corrupt practice acts which define offenses against the election laws and impose penalties. The law is undoubtedly void as to all these latter provisions.

So that he and I agree substantially that that act is void. I think it is entirely so.

The CHAIRMAN. Now, do you mean it is void in so far as its terms conflict with the Federal statute or do you mean that it is void in toto because in part it conflicts with the United States statutes?

Mr. WICKERSHAM. I have no doubt first that it is void so far as it conflicts with the Federal statute. I think it is void in toto, because of the defect in its title, which he and I agree about. He does not now go that far. As I understand, Mr. Grigsby thinks it is null and void in part. As to that part which is included within its title he thinks it is constitutional.

Mr. HUDSPETH. Any election held under that act would be a void election, would it not?

Mr. WICKERSHAM. No; it only applies to the matter of the form of ballots. It applies to a lot of other things. But the only effect that it has upon the election is to fix the form of the ballot, and that form of the ballot is not particularly in conflict with the form provided for by Congress itself. So that I have not made any particular point about that.

Mr. HUDSPETH. I must have misunderstood you a while ago. I understood you to say that it has other provisions put in there by the Senate.

Mr. WICKERSHAM. It has, and as to those he and I both agree that they are void, that they do not relate to the ballot.

Mr. ROWAN. What does it say there about the ballots?

Mr. WICKERSHAM. It simply provides that there shall be an official ballot issued by the clerk of the court.

Mr. ROWAN. Does it not provide how it shall be marked?

Mr. WICKERSHAM. Yes.

Mr. ROWAN. Is not that in conflict with the organic law?

Mr. WICKERSHAM. I think it is, but we have held our elections under it and the people have voted under it, and that is all there is to it.

Mr. CHINDBLOM. Does the organic law say anything with reference to the form of ballot?

Mr. ROWAN. Yes; it prescribes the form.

Mr. CHINDBLOM. It provides "that the ballot at the first election shall be substantially in the following form."

Mr. WICKERSHAM. Substantially in the following form.

Mr. CHINDBLOM. That is the manner in which the office and the name of the candidate shall be shown upon the ballot. But does it go to the extent of the things which are generally included in the term "Australian ballot system"?

Mr. WICKERSHAM. It makes an effort to provide secrecy of the ballot, and while the form of the ballot prescribed by Congress is not changed particularly, those clauses which follow in there are undoubtedly void.

Mr. ROWAN. It is substantially valid?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. It may be an official ballot, the ballot may be marked and cast in secret, the ballot may be furnished by the election officials, and still be substantially in the form as stated by section 3 in the act of 1912?

Mr. WICKERSHAM. I am not making any point on that in this case. We both agree on that that there is no particular defect in the election on that account.

The CHAIRMAN. In other words, the ballot that was used in your territorial legislature was, as both you claim, in substantial compliance with the Federal law, with reference to this?

Mr. WICKERSHAM. Yes, sir. There is no doubt about that.

The CHAIRMAN. As I understand, neither of you makes any question about that?

Mr. WICKERSHAM. No; my view about it is this, that an elector could vote a ballot complying with the United States statute, or he could vote a ballot that he could write himself, if it complied with the statute.

The CHAIRMAN. That is, if the ballot is in substantial compliance with the Federal law?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. I understand you.

Mr. WICKERSHAM. I do not think there is much point about that.

Now, Mr. Chairman, the first point that I make on the merits of this case relates to incomplete canvass of the election returns. When this election was over the election officers began to send in their election returns to the clerks of the courts of the four divisions——

Mr. ROWAN. This was a special election?

Mr. WICKERSHAM. No; the general election. On page 19 of my brief I take up the matter of the incomplete and fraudulent canvass of the election returns.

There were a lot of ballots cast that were excluded by the election officers. For instance, a ballot would be marked on the right-hand side instead of on the left-hand side as prescribed by the election law.

Mr. HUDSPETH. Let me see if I follow you right there. In my state we mark out the name with a blue pencil that which we do not want to vote for.

Mr. WICKERSHAM. They do sometimes here.

Mr. ROWAN. Did you read the provision of the law as to how they express their choice.

Mr. HUDSPETH. In Arizona they put a cross right next to the name they want to vote for. What is the method here?

Mr. WICKERSHAM. In the instructions to voters the form is prescribed here [reading]:

Mark X in the square at the left of the names of the candidates for whom you desire to vote. If the name of the candidates for whom you desire to vote does not appear upon the ballot insert with a pencil in the blank space.

There is a blank space to the left in which to make the mark. A great many mark on the right-hand side instead of on the left. This is the Territorial act.

Mr. HUDSPETH. Do you hold that that is a void ballot?

Mr. WICKERSHAM. No; I do not, for I hold that anything which shows the intention of the voter is legal.

Mr. HUDSPETH. I think you are correct there.

Mr. WICKERSHAM. We do not differ.

Mr. HUDSPETH. Although in the contest over the election of governor in Arizona it was held that such ballots were void and they were thrown out, although the voter had expressed his choice by making a cross on the right-hand side. I think the decision was wrong. It was a Democratic court that seated a Democratic governor, but I think it was wrong.

Mr. WICKERSHAM. It was wrong in Alaska; for our Alaska law, passed by Congress, does not make any special provision as to that and does not make a penalty such as that.

The CHAIRMAN. Does it prescribe how the voter shall mark his ballot?

Mr. WICKERSHAM. No; it does not prescribe anything at all.

The CHAIRMAN. Makes no provision?

Mr. WICKERSHAM. No provision for it. He could write his name.

Mr. CHINDBLOM. Do you not think, as a matter of fact, the contemplation of the act of 1906 was that a man, a voter, desiring to vote for a Delegate for Alaska would vote a ballot containing only one name?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. And that ballot, if in the form prescribed here for Delegates from Alaska, would have no marks on it, but would be the old vest-pocket ballot that we used to have in the States, where you had your own ticket and put it in the ballot box?

Mr. WICKERSHAM. My view is that if he votes that kind of ballot there is no question about its being legal. Or if he votes any ballot

which is substantially that, if he puts the name opposite the candidate on either side, substantially to show his intention, it is the same thing. I think we do not disagree about that at all.

Mr. GRIGSBY. When you state that we do not disagree, I do not want to commit myself, because I do not want to be barred.

Mr. WICKERSHAM. I appreciate that. I am doing all the talking, and you are not barred by anything I say.

The part about the 60 or 100 ballots was this: I had nothing to say about this election. My opponent had the machinery of the election. The governor of Alaska appoints the commissioners. The commissioners appoint the election officers, excepting in towns, where the town council appoints the election officers. The law provides that they shall provide one man from the opposite political party, but we have two or three bunches of Republicans, and one bunch is always fighting me, so that when the Democratic officers got ready to appoint these officials they would appoint their personal friends and then my Republican enemies. When they would take up one of these ballots in some precinct and find a vote for Wickersham and would note that the cross mark was on the right-hand side, and the law provides that it shall be put on the left-hand side, they would say, "We will throw it out," and out it would go. In another precinct they would say, "Here is one for Sulzer. It is on the right-hand side, but it shows the intention of the voter, so we will count it."

Mr. ROWAN. Are these votes before us here?

Mr. WICKERSHAM. Yes. So I got it both coming and going. Wherever there was a vote they could throw out on a technicality they would throw it out if it apparently was against Mr. Sulzer.

Mr. HUDSPETH. Will you show the committee those?

Mr. WICKERSHAM. Yes; there is no question about it. I will show them. I am referring to the situation that exists in reference to these 50 or 60 or 100 ballots that were not counted. There were a lot of those ballots that were thrown out, and they were sent with the election returns to the governor's office, and the canvassing board, when they got to the point of canvassing this vote, began to count those ballots as they did two years ago. The canvassing board in 1916 counted all those ballots and determined whether the election officers of these various precincts had been right or not, and they counted them. They would throw it out because it was against me and count the same kind of a ballot for my opponent in the next one. They had a standard that determined what rule should be followed.

Mr. O'CONNOR. What was that standard?

Mr. WICKERSHAM. I do not know what it was except that it showed the intention of the voter.

Mr. HUDSPETH. That was the Territorial canvassing board?

Mr. WICKERSHAM. That was the Territorial canvassing board, created by act of Congress.

Mr. CHINDBLOM. What was the total vote in 1918 for Delegate?

Mr. WICKERSHAM. Something over 9,000.

Mr. HUDSPETH. Did the result of that canvassing board show you had a majority?

Mr. WICKERSHAM. The result of the canvassing board in 1916?

Mr. HUDSPETH. I am referring to the last election.

Mr. WICKERSHAM. I will tell you about it. They got along quite a little ways, and were canvassing all these votes, when they dis-

covered that I was winning. Then the canvassing board, headed by the governor, said, "This will not do. We will have to submit this to the attorney general," and my friend here, being the attorney general, they submitted it to him, and he very promptly reversed himself of two years ago when he held they had a right to count those votes, and that they did not have a right at this time. The votes were never counted.

The CHAIRMAN. In other words, the canvassing board held that as a canvassing board they had no right to go into the ballots that had been thrown out and count them for either of the parties?

Mr. WICKERSHAM. No; Mr. Grigsby held that, and the canvassing board followed his opinion.

Mr. CHINDBLOM. Does the canvassing board in Alaska actually recount the ballots?

Mr. WICKERSHAM. No; they only take the returns, but with the returns are the rejected ballots, and they count them because they have never been counted. The decision would be made by some rule showing the intention of the voter.

Mr. CHINDBLOM. Are those rejected ballots brought here separately?

Mr. WICKERSHAM. Yes.

Mr. ROWAN. With regard to the last election of 1918, the rule of the canvassing board was that they would not go into the question of sufficiency of the ballot, but merely forwarded them, did not consider them?

Mr. WICKERSHAM. Did not consider them at all. Those ballots are here and have not been counted. Whether or not, they did not do it. They did do it in 1916.

The CHAIRMAN. Was the ruling correct?

Mr. WICKERSHAM. They did it in 1916; but, they did not do it in 1918.

The CHAIRMAN. Had they any more right to canvass these ballots than they had to canvass the count other ballots?

Mr. WICKERSHAM. I am not clear about that. But I say they did do that.

Mr. ROWAN. They canvassed the compilation. I suppose the legal question brought up before them was as to whether or not they had anything else to do except to see that the compilation was correct.

Mr. WICKERSHAM. Yes; but along with these returns were 50 or 60 rejected ballots that had been cast. Mr. Grigsby instructed them in 1916 to canvass them. In 1918, when it was dangerous, they were not canvassed.

The CHAIRMAN. That is they claimed it was not their duty to canvass these ballots.

Mr. WICKERSHAM. I am not prepared to say that the opinion is correct. Here are the votes never having been canvassed. They are up to this committee to determine whether these people are to have their votes counted.

At page 738 of the record the question came before the canvassing board. [Reading:]

The CHAIRMAN. Now, about this ballot. It is clearly improperly drawn, but the intention of the voter seems to be indicated.

Mr. DAVIDSON. It looks that way to me, too.

The CHAIRMAN. I suggest that that ballot be counted.

Mr. DAVIDSON. I agree with you there. I think that is plainly indicated. We found a lot of them like that last year.

The CHAIRMAN. What did you do?

Mr. DAVIDSON. We counted them.

Mr. GARFIELD. Does it require a motion?

The CHAIRMAN. Requires a motion.

Mr. GARFIELD. Then I move you, Mr. Chairman, that this vote—

These 50 or 60 ballots—

be counted.

And they went at it and they kept at it, until they found they were losing out on the proposition; they got about half done, then they stopped it, because it was going to land me in, apparently. At least my attorney tells me that. I have not seen the ballots and know nothing about it except what he says.

Then, February 18, 1919, on page 794 of this record, Mr. Grigsby wrote a long letter to the governor and chairman of the canvassing board; he wound up his advice by saying, on page 797, this:

Whatever error the judges of election may have committed in the acceptance or rejection of ballots, they can only be corrected by the tribunal having jurisdiction to try election contests.

It is signed "George B. Grigsby."

Now, he thinks it is up to you gentlemen, and I am submitting it to you also, so that I suppose there will be no question about it.

But now my attorney—it is in this record that he was present at the time these things happened, and I know nothing about it except as he testifies on page 187 [reading]:

Mr. MARSHALL. I will continue right along. In the beginning of the canvass certain ballots appeared whereon the voters had indicated their choice by marking a cross at the right of the names of the men for whom they desired to vote and certain others where they had apparently indicated their choice by striking out the names of all except those for whom they desired to vote.

In any event, the canvassing board considered that the purpose of the voters under the two circumstances stated was clearly manifested, and they proceeded wherever ballots of that character had been rejected by the judges of election to count those ballots for the candidate for whom they had been cast. This method was pursued until possibly little more than half of the returns had been canvassed, when it was apparent from records that had been kept that Judge Wickersham had gained by this procedure, I think he having made a net gain of nine votes. It was apparent that the election would be very close, and the Bristol Bay precinct had not yet been received, and the canvassing board raised the question as to the propriety of counting ballots such as I have described and determined to call upon George B. Grigsby, then the attorney general, for his opinion as to their right to count such ballots.

Now, there is no use of going over all that, but Mr. Grigsby gave this opinion as I have stated it.

Mr. Grigsby makes some controversy about the fact that I say here in my brief, "The fact is that neither contestant nor his attorneys have ever been permitted to see or inspect these rejected ballots." Well, that is true. They were in the hands of the canvassing board and they were so managed and manipulated that my attorneys could see only just a little now and then, and hear the conversation, and get some sort of an idea, and they have indicated their official ideas themselves about the 50 or 60 votes and the question whether those votes are going to be canvassed or not; whether, as Mr. Grigsby says, this committee can examine those votes and determine whether they shall be counted either for him or for me, as appears to have

been the intent of the voters. I have never seen the ballots; I know nothing about them. They have been in the charge of my partisan opponents all the time, and marks are easily changed.

Mr. ROWAN. Can you instance any illegality in the keeping of the ballots during that time?

Mr. WICKERSHAM. No.

Mr. ROWAN. It is mere inference?

Mr. WICKERSHAM. Mere inference; mere suspicion. There is no evidence that there has been any changes, except by Mr. Rustgard.

Mr. CHINDBLOM. If this committee should inspect those rejected ballots, do you think that should be done without an inspection of all the other ballots?

Mr. WICKERSHAM. Yes; the other ballots have been all inspected and counted, and they are included in the election returns and the votes all compiled. Now, of course, in those ballots there are ballots, as I tell you, that are counted for Mr. Sulzer that are exactly like a lot of those that are thrown out. So I am informed by those who have examined the ballots at various places. But there is no evidence in the record, so that you probably would not get to them.

Mr. GRIGSBY. The ballots are all here in evidence.

Mr. CHINDBLOM. All the ballots are here?

Mr. WICKERSHAM. I suppose so.

There are charges of fraud in this case, and I want to call the committee's attention to those charges of fraud for a moment. They are referred to on page 25 of my brief. There was an election in Ketchikan. The Ketchikan election precinct is the most southern precinct in the Territory of Alaska. The commissioner in that precinct is a man by the name of Mahoney. He is the clerk of the United States district court at Ketchikan, and he is the commissioner in that district.

There are 12 or 13 precincts in his election district. He is a very bitter partisan. He bet on the election, and he ran an automobile, and did all sorts of things on election day himself, as clerk of the court. His office is in the town of Ketchikan. Ketchikan is an incorporated town. He did not appoint the election officers in that town of Ketchikan, so he is not responsible for what happened in the town. But outside of Ketchikan, at 10 voting precincts scattered over a territory of 50 miles, he appointed all the election officers in those outside precincts.

On election day Mr. Sulzer was in Ketchikan. Mr. Sulzer lived at that time at a little place called Sulzer, about 60 or 70 miles west of Ketchikan, across an arm of the sea, and in another precinct altogether; but that precinct was in this election district. Mr. Sulzer came down to the polls at Ketchikan, however, and offered to vote. He, of course, being a well-known man and politician, some of my friends objected to his voting, and he was challenged. He protested somewhat mildly, and they gave him a copy of the challenge oath which everybody has to take under the United States Statutes, and which I have read to you. Mr. Sulzer took that challenge oath, according to the testimony here, and read it very carefully, and then laid it down and said he did not care to take that oath; he refused to sign the oath and vote.

He went out of the election room; Mahoney met him outside with an automobile, and took him and two other men in the automobile,

and ran him down to the beach, a mile just outside of the town, to a place called Charcoal Point; here, at Charcoal Point, the election officers were all appointed by Mahoney, and Mr. Sulzer went in there and voted. Nobody challenged him; he voted in the Charcoal Point precinct, away from his own precinct, in violation of the statute which I have read to you. He had never resided in the Charcoal Point district; was not a resident there, and made no pretense of being. He violated the law and voted; but, Mr. Sulzer is dead and nothing can be done about it; nevertheless, his vote is alive and it should be thrown out. It is admitted, I think, that he voted for himself. Mr. Grigsby does not disagree that his vote is an illegal vote, and must be thrown out.

Mr. GRIGSBY. I do not want to be committed.

Mr. WICKERSHAM. I am not speaking for you, except in the record you do admit it.

In the automobile that Mahoney drove down to Charcoal Point, was an Indian named George Nix. This Indian resided near Sulzer, at the Indian reservation. He was a "reservation Indian" over there. Mahoney took him down in the same automobile, and this Indian was challenged.

Mr. ROWAN. Had he attempted to vote in the other place?

Mr. WICKERSHAM. I think he had. I think the vote shows that, although I am not sure about it. Anyway he was taken down to Charcoal Point in this same automobile, and went in and was challenged; the challenge oath was prepared for him, the Indian signed it before the election officers, and voted.

Mr. CHINDBLOM. At Charcoal Point?

Mr. WICKERSHAM. At Charcoal Point.

Mr. O'CONNOR. Has any prosecution ever been instituted against him?

Mr. WICKERSHAM. No. He was taken there by Mahoney, the clerk of the court, in his automobile, and the evidence shows that Mahoney stood right there, and when the Indian hesitated he said to the Indian, "Sign that paper." And the Indian signed it at Mr. Mahoney's request.

Mr. CHINDBLOM. Did you say that somebody challenged him?

Mr. WICKERSHAM. Yes; a Republican challenged him at Charcoal Point.

Mr. O'CONNOR. Then he makes the affidavit after he is challenged?

Mr. WICKERSHAM. Yes; he does not make the affidavit until after he is challenged.

Taylor Althouse tells the story about the Indian and says that he challenged him. [Reading:]

He came in there, and I said, "I challenge that man," and Mr. Mahoney said, "On what ground?" and Mr. Mahoney and I are acquainted, and I said, "On account of the company he is keeping," meaning he was a Democrat. I intended nothing personal, and Mr. Mahoney told me then that I would have to give a reason, and I said, "He is not a resident of the precinct."

There was some more talk back and forth, and Mahoney told the Indian to sign it and the Indian signed it and swore to it and voted.

Mr. ROWAN. Was there proof in the record that he was not a resident?

Mr. WICKERSHAM. Yes; all the witnesses testified to that positively. There is no claim that he was.

Mr. O'CONNOR. Except his affidavit.

Mr. WICKERSHAM. Except his affidavit, which was false.

Having read Taylor Althouse's testimony, I will now turn to that of E. C. Austin, the Democratic head of the Charcoal Point board of election, appointed by Mahoney, the Democratic commissioner and deputy clerk, and hear his testimony at page 567 of the record. Austin testified [reading]:

Q. Do you remember George Nix from Hydaburg?—A. I remember there was a man by that name.

Q. An Indian?—A. I think so.

Q. Do you remember whether he was challenged?—A. By Mr. Althouse, I think.

Q. And swore in his vote?—A. Yes, sir.

Q. And you administered the oath to him?—A. I did.

Q. And he swore that he had lived in that precinct 30 days prior to election?—A. Charcoal Point?

Q. Yes.—A. I don't remember.

Q. Do you know the form of the oath you administered to everyone who was challenged?—A. Yes, sir.

Q. You knew he hadn't been a resident of Charcoal Point 30 days?—A. He registered from Sulzer.

Q. Why did you let him commit perjury?—A. I wasn't there to protect him; he ought to know what he was doing.

Q. He was an Indian?—A. Yes.

Q. From Hydaburg?—A. I don't know; Hydaburg or Sulzer—somewhere on the west coast. I read over the affidavit to him—the challenge before he signed it—and he signed it.

Q. And swore to it before you?—A. Yes.

Q. And you at that time knew that he was not a resident of that precinct?—A. Yes; certainly I did.

That shows you the character of Austin and Mahoney.

Mr. ROWAN. Just to make the point clear on the law, was he not bound to take that vote?

Mr. WICKERSHAM. Yes; but he was not bound to swear him. He knew it was perjury.

Mr. ROWAN. But he swore to it.

Mr. WICKERSHAM. He was obliged to receive his vote, but he knew he was not entitled to vote; and, he knew that the Indian was committing perjury, and he saw this other man standing there telling him to sign the paper.

Mr. O'CONNOR. Your opinion is that although the man had a right to vote there the election officer should be precluded from administering the oath?

Mr. WICKERSHAM. No. The election officer did not have to become party to a perjury.

Mr. O'CONNOR. But we are talking about the law.

Mr. ROWAN. But the law gives him the right to vote if he takes an oath. Why is it not the election officer's duty to present the oath and ask him whether he will take the oath?

Mr. WICKERSHAM. Not when it is perjury.

Mr. GRIGSBY. Then they have the right to judge in some cases.

Mr. ROWAN. I know it is different in our State. I know if a man insists on voting he has a right to.

Mr. O'CONNOR. He simply takes the risk of prosecution.

Mr. CHINDBLOM. I do not recall this fact. The legislature passed a ballot law which changed the qualifications of voters?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. Did those changes include a provision that a man might register and vote anywhere in the division?

Mr. WICKERSHAM. Yes, sir.

Mr. CHINDBLOM. Were there other candidates upon this ballot besides the Delegate to Congress?

Mr. WICKERSHAM. Yes; all the candidates for the legislature were on this same ballot. But the election officers had all been instructed upon the face of the election returns, as you will see, by Mr. Grigsby in his opinion as to their qualifications. He has given all the election officers this opinion, as I will call to your attention in a moment.

Mr. O'CONNOR. Under the Territorial act, this Indian did not violate any law?

Mr. WICKERSHAM. Under the Territorial act, no. Yes; he did. Yes; he swore that he had resided in that precinct for 30 days. He committed perjury.

Mr. ROWAN. That was the form of the oath?

Mr. WICKERSHAM. That was the form of the oath.

Mr. O'CONNOR. But under the Territorial act he could have registered from any division.

Mr. WICKERSHAM. Not if he was challenged. That Territorial election was void.

Mr. CHINDBLOM. Evidently the election officials were not following the Territorial law?

Mr. WICKERSHAM. The election officials were filling the ballot box just as fast as they could, with any sort of votes that came in.

Mr. CHINDBLOM. But when they insisted upon a challenged voter making the affidavit that he was a resident of the precinct in which he had attempted to vote, they were not following the Territorial election law?

Mr. WICKERSHAM. It makes them guilty of perjury.

Mr. A. E. A. Heath, on page 122 of the record there, testified [reading]:

Q. Do you know that there was an Indian voted there that day by the name of Nix, I think his name was George A. Nix?—A. There was such a man who went and voted.

Q. Had you seen him before?—A. I don't think so.

Q. Do you know where he resided?—A. He claimed to reside on Prince of Wales Island.

Q. Did he reside in the Charcoal Point precinct?—A. No.

Q. Who brought him in there, do you know?—A. No; I wouldn't be positive about that. They were bringing them down in cars, but I wouldn't be positive he was brought in a car or not; there was quite a bunch of fellows came in at the time.

Q. Isn't it true that Mr. William T. Mahoney, the commissioner in this district, was very busy all that time bringing people to vote?—A. Yes; he brought them down several times.

Q. Do you know whether he brought Nix down?—A. I wouldn't be positive; my impression is he did.

Q. Do you remember some objection made to Nix's voting?—A. Yes; there was a watcher there that objected to his voting.

Q. Who was that, if you remember?—A. Old man Althouse was the watcher; and he left at one time and went to dinner, and Oliver took his place, and I wouldn't be positive whether Oliver or Althouse was there at the time.

Q. Do you remember that Nix swore in his vote?—A. Yes.

Q. What oath did he take, do you know?—A. The printed oath that they usually take; Austin read it to him.

Q. And he swore to that oath?—A. Yes.

Q. It is the oath required by the election law?—A. Yes.

Q. United States election law for the Territory? Is that right?—A. Yes.

Q. Had you ever seen Nix in that precinct before?—A. No, sir.

Q. Did he reside in that precinct?—A. No; he resided in Hydaburg, he said.

Q. Where is Hydaburg?—A. Over on Prince of Wales Island.

Q. It is an Indian reservation?—A. I think so.

Q. Over beyond Sulzer post office?—A. Yes, sir; it is in Sulzer precinct, I think.

I quote here in the brief the challenge oath which he signed stating that he had actually resided in the precinct 30 days.

Mr. HUDSPETH. Is there any evidence as to whom he voted for?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. What is that?

Mr. WICKERSHAM. The evidence is that he was brought down there in the vehicle with Mr. Sulzer and these other people, and I am not sure but what he has stated. Anyway, there is no question about that. It is in the record.

Mr. Austin was on the witness stand and under the general questioning as to the filling of this ballot box Austin testified, on page 31 of the brief, that they were bringing these people down there in automobiles from Ketchikan, were catching everyone they could in Ketchikan and trying to vote them, and if they were challenged and found that they could not get their vote in at Ketchikan because the election officers were not appointed there by Mahoney; they were not permitting any fraudulent votes in that precinct, and so, if they could not get a vote in Ketchikan, they would run him down to Charcoal Point.

There was no objection made to voting men there. And Austin admits substantially that they were doing that all day. He does not admit it in that language, but upon inquiry, "Whenever they couldn't get their votes in here they went down to Charcoal Point," he said, "I have heard since the judges had no way of knowing; they brought these people in there, and they voted if they came within the qualifications; and the practice was followed that they registered from the precinct they lived in, and we allowed them to vote." So that, wherever they came from, Juneau or anywhere else, they allowed them to vote.

The CHAIRMAN. I notice that you state they registered from a certain locality.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Did all the voters give their residence to the judges when they voted?

Mr. WICKERSHAM. That I do not know. I have no information about that at all except what they say was that they knew where these men came from.

The CHAIRMAN. I understand that, but I was only getting at what the custom was with reference to registering voters.

Mr. WICKERSHAM. That I do not know.

Mr. O'CONNOR. Why did not this Indian offer to vote in the precinct in which he really lived?

Mr. WICKERSHAM. Because he could not get home. He was 60 or 70 miles away from home across the water, and no boat running. The distances are so great in Alaska, that two precincts may join each other and the voting places be 60 or 70 miles apart and a boat only runs once a week.

Mr. CHINDBLOM. You have no system of registering votes in Alaska?

Mr. WICKERSHAM. Except when they come to vote.

Mr. CHINDBLOM. There is no preliminary registration?

Mr. WICKERSHAM. No.

Mr. GRIGSBY. The voter signs his name, under the territorial act.

Mr. WICKERSHAM. The clerk is instructed under the United States statute, or under the territorial act, that the voter may sign his name. I expect that is correct.

There was a drummer in Juneau on that day, one of these fellows who goes around to sell dry goods and so forth. He lived in Seattle. As a matter of fact he claimed residence in Juneau, about 200 miles north of Ketchikan. But he was in Ketchikan that day so, he came out and tried to vote at Ketchikan.

Mr. ROWAN. What was his name?

Mr. WICKERSHAM. A. Van Mavern. It is referred to on page 31 of my brief. He could not vote at Ketchikan, and so he went out to Charcoal Point. Mr. Austin testifies in page 568 of the record. [Reading:]

Q. He was not challenged?—A. No.

He was not challenged at Charcoal Point. Contestant called Van Mavern, at Juneau, page 155 of the record. [Reading:]

Q. Now, Mr. Van Mavern, when did you first establish your residence in Juneau?—A. About six years ago.

Q. And you have had Juneau as your residence since?—A. Yes, sir.

Q. You were at Ketchikan on the 5th of last November?—A. Yes, sir.

Q. And you voted at the Charcoal Point precinct at that time?—A. Yes, sir.

Q. How did you come to vote there?—A. Because I happened to be in Ketchikan is all, I think.

Q. Why did you not vote at Ketchikan instead of Charcoal Point?—A. I went there first, and there was some question as to whether I would be permitted to vote there, and so I walked out to Charcoal Point.

Q. You were at that time a resident of Juneau?—A. Yes, sir. I suppose I was. I was not a resident of Juneau any more than Ketchikan in reality.

Q. How long had you been at Ketchikan?—A. Two days; perhaps three at that time.

Q. How long did you remain there?—A. I don't remember now; perhaps four or five days.

Q. You were there taking orders for goods?—A. Yes, sir.

Q. You had your office here in Juneau?—A. Yes, sir.

Q. You had a room at the hotel here in Juneau?—A. Yes, sir; as a transient, not a permanent room at that time.

Q. Juneau was your headquarters?—A. Yes, sir; considered such.

Q. And from Juneau you made trips as a traveling salesman to the various smaller towns in southeastern Alaska?—A. Yes, sir.

Q. You think you were just as much a resident of any other small town in Alaska as Ketchikan?—A. Yes, sir; or Juneau, really.

Q. Well, you had an office in Juneau?—A. Yes, sir; but I did not spend any more time here than in Ketchikan.

Q. Where did you have your personal belongings?—A. In Juneau.

Q. In Juneau. Were you here in Juneau last winter?—A. All of the winter; yes, sir. That is, well, I was out about a month.

Q. Were you here in March and April?—A. Yes, sir.

Q. Did you vote at the last city election?—A. No; I was out of town, I believe.

Q. Did you register for the city election?—A. Yes, sir; I think I did; last fall.

Q. You registered for this city election held this spring?—A. This spring? I did not register especially for that election. I think I was registered, though. That would apply for this year, would it not?

Q. When do you think you registered last?—A. I think it was last fall, before the Territorial election.

Q. When you voted at Charcoal Point, who did you vote for?—A. I voted for Mr. Sulzer.

Now, that is the way it was done. These fellows would go down to the polls at Ketchikan to vote, get challenged, and then they would immediately get into Mahoney's automobile and be run out at Charcoal Point to vote.

But Heath, the next man, testified to substantially the same story except that he had been in Alaska, Juneau, very largely, for four or five years. The evidence showed that he had been in New Mexico, British Columbia, and had not been in Alaska for four or five years. He was a single man, so far as we know, had no home and owned no property in Charcoal Point.

And his father, E. A. Heath (p. 32 of the brief) testified [reading]:

Q. Mr. Heath, you have a son, Bert, have you?—A. Yes.

Q. Did he vote that day?—A. He did.

Q. How long had Bert been in that precinct when he voted?—A. In July before.

Q. Where did he come from?—A. From Seattle up there.

Q. Where had he been for the previous four or five years?—A. In Mexico, Arizona, B. C. country.

Q. British Columbia, you mean?—A. Yes; and Montana.

Q. Had he resided in the Charcoal Point precinct prior to July, 1918, for four or five years previously?—A. No; he had been away.

Q. Did he have any house or dwelling place of his own in that precinct?—A. He did not.

Q. Or any other property?—A. He did not.

Q. Mr. Heath, is it not true your family all supported Mr. Sulzer, did they not?—A. I don't know; I did.

Q. Well, don't you know whether members of your family voted or talked in support of him?—A. I felt pretty well satisfied they were going to support him.

Q. You talked with them frequently?—A. They talked that way.

Q. Including Bert?—A. Yes.

Q. Have you any doubts that all did vote for him?—A. I am pretty well satisfied they did; all my sons and daughters, excepting one; I doubt whether Mr. Lloyd and his wife did.

Q. You don't think Mr. Lloyd did?—A. I think not.

Q. But you think all the rest of your family that did vote voted for Mr. Sulzer, including Bert?—A. Yes.

And he had no property in Ketchikan and owned no property in Charcoal Point or anywhere else. His father, Democratic judge of election at Charcoal Point precinct, testifies, on page 32 [reading]:

Q. Mr. Heath, you have a son Bert, have you?—A. Yes.

Q. How long had Bert been in that precinct when he voted?—A. In July before.

Q. Where did he come from?—A. From Seattle up there.

Q. Where had he been for the previous four or five years?—A. In Mexico, Arizona, B. C. country.

Q. British Columbia, you mean?—A. Yes; and Montana.

Q. Had he resided in the Charcoal Point precinct prior to July, 1918, for four or five years previously?—A. No; he had been away.

Q. Did he have any house or dwelling place of his own in that precinct?—A. He did not.

Q. Or any other property?—A. He did not.

Q. Mr. Heath, is it not true your family all supported Mr. Sulzer, did they not?—A. I don't know; I did.

Q. Well, don't you know whether members of your family voted or talked in support of him?—A. I felt pretty well satisfied they were going to support him.

Q. You talked with them frequently?—A. They talked that way.

Q. Including Bert?—A. Yes.

So that the evidence is quite clear as to that fellow. He had not resided in the territory of Alaska for four or five years. He had no home of his own, and his father testifies very frankly about the matter.

Mr. O'CONNOR. Did you get his deposition?

Mr. WICKERSHAM. No; he got out of the country. He got on the boat and skipped out, and that was the end of him.

Mr. O'CONNOR. Is that in the record?

Mr. WICKERSHAM. Why, I think it is, but I am not sure about it. Now, J. C. Cochran, a lighthouse keeper, had at one time resided in the town of Ketchikan. He had no family, no home, no property of any kind. This is all shown in the record. But about six months prior to this time he had been appointed lighthouse keeper at Lincoln Rock, in Wrangell precinct. He had been gone from Ketchikan some six or nine months. He had made some pretense of having resided in Ketchikan prior to that date and he made some attempt to vote in Ketchikan, or offered to vote; his vote was refused. Then he, too, was taken in this automobile with Sulzer, and he voted out at Charcoal Point precinct.

The CHAIRMAN. In what precinct is this lighthouse?

Mr. WICKERSHAM. This lighthouse is in the Rainbow precinct.

Mr. ELLIOTT. Was he a Federal employee?

Mr. WICKERSHAM. No; lighthouse keeper.

Mr. ELLIOTT. Would he then not be a Federal employee? That position would make him a Federal employee.

Mr. HUDSPETH. You say that he admitted that he voted for Sulzer. Who did he admit that to?

Mr. WICKERSHAM. He admitted that to this witness here.

Mr. HUDSPETH. You know these things, but it is very important that this committee knows, as we have to pass on this question.

Mr. WICKERSHAM. This says, "He went in the automobile with Sulzer," but I thought there was an admission that he voted for Sulzer.

Mr. CHINDBLOM. After being challenged and refused a vote at Ketchikan, where he had not resided for months—some months, as I understand it—he was taken to Charcoal Point precinct by Mahoney in an automobile. Now, is the evidence of that fact in the statement of the automobile driver?

Mr. WICKERSHAM. On, yes; the evidence is clear on that point.

The CHAIRMAN. Did he testify?

Mr. WICKERSHAM. No; he was gone, of course; he was out of the country. I will refer to that again. There is, I think, some testimony in here to the effect that he made an admission that he voted for Sulzer, but I can not find it just at this moment. Now, the next illegal voter is a tailor. We took this evidence. Of course, you know how we took the evidence. The testimony of a lot of witnesses was taken in a hurry and we skipped that man's name. His name is not given here in this brief, but all the facts are given, except his name. On page 33 of this brief Althouse testifies with respect to him:

There were three besides Sulzer; one of them was that tailor and the other man I mentioned here.

Q. Cochran?—A. Cochran. And that other man, he was turned down.

Q. He wasn't permitted to vote?—A. No; he did not vote.

Q. Why didn't he vote?—A. He wouldn't take the oath.

Q. Do you know where that tailor was from? A.—He was from Seattle; naturalized in Seattle.

Q. Did he live in the Charcoal Point precinct? A. I never saw him only around Ketchikan; I don't know where he sleeps and eats; I never saw the man in Charcoal Point precinct.

Q. Were you well acquainted out there?—A. Around back and forth every day.

Q. And knew the people?—A. Yes, sir.

Q. Did he reside there?—A. No, sir.

Althouse testified that both Nix and the tailor voted (see p. 137, record):

Q. How many challenges were sustained against people Mahoney brought there?—A. I am not clear; only those two—Indian and the tailor.

Q. But as to the Indian, the challenge was not sustained; he was allowed to vote?—A. Yes; and the tailor also.

Mr. ELLIOTT. Those were the only two challenges sustained in the town?

Mr. WICKERSHAM. Apparently. Now, Samuel S. Kincaid and his wife are the next two witnesses. They were on the witness stand, and they admitted that they voted for Sulzer and all that sort of thing. So there is no question about those. Those are the votes in the Charcoal Point precinct that we knew about, that we got testimony about, but there were many more. We were satisfied from all the facts and circumstances, but we could not get their names. They were brought in there and voted and went out again, and that was the end of it. We could not find them.

Mr. O'CONNOR. Have you the poll list of those who voted?

Mr. WICKERSHAM. Yes; their names are written down there, but the people are gone. Now, then, turn to Ketchikan. There were some illegal votes cast in Ketchikan. Forest J. Hunt, judge of election, testified, at page 84, record [reading]:

Q. Now, on the morning of the election of November 5, 1918, was there a group of persons who voted here very early?—A. Some were waiting when we opened the polls.

Q. Dudley Allen and his wife?—A. I think Dudley Allen and his wife and William Semar and his wife.

Q. And Gus Gillis?—A. I don't know. They voted early.

Q. Who is Dudley Allen?—A. He is a traveling man.

Q. Is he a commercial traveling man?—A. Yes.

Q. Where does he reside?—A. Juneau.

Q. Did he reside in this city?—A. No.

Q. Had he been here 30 days prior to that election as a resident of this precinct?—A. No.

Q. Nor his wife either?—A. I don't think so.

Q. Have you made inquiries since?—A. General inquiries here, and that they were simply here on business; she was making a trip with him for the first time.

Q. And they were staying at the hotel?—A. I believe so.

Q. You don't know, or do you know, whether they were residents of this precinct?—A. I know they were not residents of this precinct.

Q. What about Gus Gillis and his wife?—A. He is not a resident, and never has been.

Q. Had he any home here?—A. No.

Q. Had he been a resident prior to that time?—A. No; not that I know of.

Q. Where do you understand he resided?—A. Juneau.

Q. Had either of them or any of them been in this precinct 30 days prior to the date of election?—A. No; they had not.

Q. What about William Semar?—A. He was a resident of Ketchikan, but he had sold out his residence here about two years prior to that election, and he was interested in a cannery out at Sitka.

Q. Did he have any residence here at that time?—A. No.

Q. How long prior to that time had he been a resident of here?—A. In the neighborhood of two years.

Q. They were in this early group that voted?—A. Yes.

Q. Did he have any home here or place of residence?—A. No home.

Q. How long had they been here prior to the date of election?—A. A few days.

Q. Not 30 days?—A. No.

Q. Had any of these people been in the precinct 30 days prior to the date of election?—A. No, sir.

Q. What do you know about the political partisanship of Dudley Allen and Gus Gillis and his wife?—A. I can't testify as to that.

Q. Were they known to be Republicans or Democrats?—A. The general report was that they were Sulzer supporters; they came in here with Sulzer supporters.

Q. Who came in with them?—A. William Strong and his wife were here and William Semar and his son-in-law. They were Sulzer partisans.

Q. So far as you know, then, they were supporters of Mr. Sulzer and supporters of the Democratic ticket?—A. I never heard them accused of anything else.

Q. How long had the Allens and the Gillises been in Ketchikan at that time?—A. I don't know.

Q. Three or four days?—A. Might have been here a week, or something like that. I do not know. They stopped at the Stedman Hotel.

Q. Now, what was Semar's business?—A. He was interested in a cannery, in charge of a cannery out at Sitka.

Q. Does he reside out there during the year?—A. Yes.

Q. Does he live in Seattle?—A. I don't know whether he lived in Seattle or not.

Q. They didn't have a residence here?—A. No.

Now, then, that is the testimony of the election officer in charge of the election. Then we take up Dudley G. Allen himself. Dudley G. Allen resided in Seattle, but claimed to reside in Juneau. He was called as a witness, and his deposition will be found at pages 150 and 152 of the record of depositions. He admitted that he resided in Juneau but voted in Ketchikan on November 5, 1918, and, although he "fussed" about it a good deal, to save his face, he admitted, on page 152, record, "I voted for Sulzer." Mrs. Dudley G. Allen, his wife, did the same thing. They were just traveling. The boat got in there that morning early, half past 7 or 8 o'clock. They were on the boat going through from Juneau to Seattle. When they got off the boat they were met by the deputy marshal, who took them on up to the polls, and they voted and went to Seattle. The record shows all that. It is perfectly clear.

Mr. CHINDBLOM. What does it show about Gus Gillis and his wife?

Mr. WICKERSHAM. The record upon that got somewhat mixed up. Gus Gillis is a traveling man also. Gus Gillis and his wife, they were there and voted, but when we took the depositions at Juneau I got the matter mixed up, and I said to Mr. Grigsby, who was taking the depositions, that this matter about Gus Gillis had gotten mixed up, and I substantially made an admission in the record that Gus Gillis had not voted at Ketchikan. Now, as a matter of fact, there are two men—Gus Gillis and Gus Gelles. Gus Gillis lives in Juneau, but Gus Gillis and Gus Gelles are two different men altogether. As a matter of fact, Gillis and his wife voted illegally.

Mr. ELLIOTT. Where do they live?

The CHAIRMAN. Does the evidence show where he lives?

Mr. WICKERSHAM. Probably not. I have read the evidence of the election officer, but I probably got mixed up on it myself, and I am afraid I got jobbed.

Mr. CHINDBLOM. I would like to know if there is any statement as to how they voted, no matter where they lived.

Mr. WICKERSHAM. He did not call Gus Gillis on the witness stand for that reason. I got balled up between Gus Gillis and Gus Gelles. I am not sure about it yet.

Mr. CHINDBLOM. How about William Semar?

Mr. WICKERSHAM. The record shows that he was brought in by Sulzer supporters and we assumed that he voted for Sulzer.

Mr. O'CONNOR. Just a moment, about this Gus Gillis—one is spelled "Gillis," and the other "es"?

Mr. WICKERSHAM. No; one is spelled Gillis and the other Gelles. Here is a letter from him to me, which shows very clearly that I was jobbed, but I assume that I committed myself there. Now, with regard to Chapman, page 37. [Reading:]

Q. Do you know a man by the name of W. Chapman?—A. Yes.

Q. Who is he?—A. Superintendent for the——

Mr. ELLIOTT (interposing). Just a moment, please. Is this the man you claim voted for Sulzer?

Mr. WICKERSHAM. No; he voted for me. He lives in Juneau.

Mr. ELLIOTT. Where does the other man live?

Mr. WICKERSHAM. I understand in Juneau also, but I do not know. I am frank to say——

Mr. ELLIOTT (interposing). Where does this man vote?

Mr. WICKERSHAM. He voted in Juneau, if he voted at all. I may say to the committee now that I probably committed myself as to that vote of Gus Gillis and his wife, and I am probably out on that, because I stated the situation to Mr. Grigsby, and he probably did not know any more about it than I did.

Mr. ELLIOTT. Where is this evidence that there is any Gus Gillis having voted in Ketchikan?

Mr. WICKERSHAM. I have just been reading that—the evidence of Forest J. Hunt.

Mr. ELLIOTT. The election registers are here?

Mr. WICKERSHAM. I think they are here, but I may be mistaken as to that.

Mr. ELLIOTT. Let me read this just a moment: "And Gus Gillis?—A. I don't know. They voted early." He was asked whether Gus Gillis voted or not, and he said they voted early.

Mr. O'CONNOR. He probably means they both voted. He did not commit himself on the proposition that Gillis did not vote. He does commit himself on the proposition that Gillis did not live there.

Mr. WICKERSHAM. This is so muddled up that I do not know whether Gus Gillis voted or not.

Mr. HUDSPETH. We can determine it from the polling list.

Mr. WICKERSHAM. Now, Chapman, page 37. [Reading:]

Q. Do you know a man by the name of W. Chapman?—A. Yes.

Q. Who is he?—A. Superintendent for the Salt Chuck Mining Co., near Kasaan post office.

Q. Do you know whether he voted here that day?—A. He did.

Q. Did he have any residence here?—A. I don't consider so.

Q. He was challenged?—A. Yes.

Q. What became of his challenge?—A. He swore in his vote.

Q. Do you know where his residence was?—A. I think he could claim a residence out to the mine; I understand he had a house built out there at the mine at Kasaan.

Q. Is that in the Ketchikan precinct?—A. No.

Q. Who challenged him?—A. Bob Oliver, I think.

Q. When he was challenged was there any effort or not to make him fill out an oath?—A. H. C. Strong urged him to fill out an oath.

Q. And was Mr. Strong a supporter of Mr. Sulzer?—A. He was, I think.

Q. Did Mr. Chapman have a wife here in the hotel at that time?—A. He did.

Q. What was she doing here?—A. She was said to be here for medical treatment; she wasn't well.

Q. But his home was over at the mining claim; they had a residence over there?—A. I understand the company furnished a house, just a residence for the superintendent, there.

Q. Have you any information how Mr. Chapman voted?—A. Nothing further than the party he came in with.

Q. And from your information you think he voted for Mr. Sulzer?—A. I am satisfied.

Mr. CHINDBLOM. Do you claim that that is evidence that he did not live in Ketchikan, that you just read?

Mr. WICKERSHAM. Well, I think so.

Mr. CHINDBLOM (reading):

Q. Do you know a man by the name of W. Chapman?—A. Yes.

Q. Who is he?—A. Superintendent for the [so and so].

Q. Do you know whether he voted here that day?—A. He did.

Q. Did he have any residence here?—A. I don't consider so.

Q. He was challenger?—A. Yes.

Q. What became of his challenge?—A. He swore in his vote.

Q. Do you know where his residence was?—A. I think he could claim a resident out to the mine; I understood he had a house built out there at the mine at Kasaan.

That is all hearsay evidence as to his residence.

Mr. WICKERSHAM. He knew that he didn't live in Ketchikan.

Mr. CHINDBLOM. He said, "I don't consider so." That was a matter of opinion.

Mr. WICKERSHAM. But you see it was the election officer, and this man voted by reason of taking a challenged oath. That was the way he came to vote. He was challenged, and the challenge was sustained against him, because he was not a resident, and then he took a challenged oath and voted. Now, then, with regard to Steve Regan, deputy United States district attorney. Hunt, the Republican judge of election in Ketchikan precinct, testified at page 85 of the record that Regan and his wife voted at Ketchikan on November 5, 1918; that they claimed to reside on a homestead near Haines, Alaska, about 300 miles north of Ketchikan, in another precinct; that Regan was a Democrat, and naturally voted for Sulzer. Bob Oliver, at page 127 of the record, testified substantially the same; and, in addition, disclosed that Mrs. Regan was challenged and took the challenged oath before depositing her ballot. Regan was called by the contestee and his deposition will be found at pages 392 to 394 of the record. He says that he was appointed deputy United States district attorney January 24, 1918; that both he and his wife resided in Ketchikan on November 5, 1918, and voted for Sulzer. There is no question about this vote. On cross-examination he discloses that while his presence had been continuous at Ketchikan, his wife's visits

there were infrequent and a long ways apart on account of the fact that she was residing on their homestead claim near Haines. [Reading:]

Q. What time did your wife and children return from the homestead last season?—A. Back to Ketchikan?

Q. Yes.—A. Some time in November, prior to the election, early in November, I could not tell just what time.

Q. Could you state approximately how soon before election they returned?—A. Why, very soon before election; I could not say exactly.

Q. Two or three days, something like that?—A. Yes; two or three days, something like that.

Q. How long had they been away from Ketchikan at that time?—A. I could not state, I am sure.

Q. Well, had your wife and—

Now, why read all that? The facts are these: That this man Regan was a deputy United States district attorney at Ketchikan; that he had a homestead up at Haines upon which he and his wife resided—at Haines, 300 miles away, and in another precinct entirely. They had to live there to maintain their residence, under the United States statute. In the meantime, Regan himself, being an attorney, had been appointed deputy United States district attorney down at Ketchikan, and had come down there to look after his official duties. He rented a house there, and he lived in the house himself, while his wife and children lived in their home, in their own house, up on their homestead at Haines.

Two days or three days before election his wife came down to Ketchikan and went down with him to vote, and she was challenged. I do not know whether he was or not, but she was, on the ground that she had not been in the precinct 30 days prior to election. He prepared a challenged oath for her, as I think the record shows, and she took that oath that she resided continuously in Ketchikan for 30 days preceding the election date, and voted. Now, the truth is that neither one of them had the right to vote. Under the United States law their home was on the homestead; it is a homestead, and they could only hold their claim to it by actual residence upon it. They had to have an actual residence upon it and they were to live there in good faith as actual residents upon the ground.

The CHAIRMAN. How long does the law require a homesteader to live upon the homestead?

Mr. WICKERSHAM. Three years, as I remember now, under the statute in Alaska, and they were residing there.

Mr. CHINDBLOM. How long had they been there?

Mr. WICKERSHAM. Oh, I don't know. They had not proved up; that is all I know; the evidence shows that.

Mr. ELLIOTT. Mr. Regan testified that he had been there three years in 1917.

Mr. WICKERSHAM. Well, that might be, but they had not proved up yet. So they were maintaining their residence there up to three days before the day of election, and Mr. Regan then claimed the right to vote at Ketchikan because his official duties were there. Now, Mr. Regan was appointed to the office of deputy United States district attorney. In 1909 the United States Commissioner of the General Land Office issued instructions with respect to this particular

class of cases. which will be found in Thirty-seventh Land Decisions, 449. [Reading:]

[Instructions.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 16, 1909.

RECEIVERS AND REGISTERS,
United States Land Offices.

GENTLEMEN: For many years it has been the practice of the department to permit a homestead entryman, who had established residence upon his claim and afterwards had been elected or appointed to a Federal, State, or county office, to be absent from his entry if required by his official duty, and to consider such absence constructive residence upon his claim. This ruling includes deputies and assistants in such offices. (Sec. 2, L. D., 147; 6 L. D., 66S; 7 L. D., 88; 9 L. D., 523, 525; 17 L. D., 195; 21 L. D., 155.)

This privilege, which is not a statutory right but rests solely upon departmental rulings, has led to such grave abuse that objects of the homestead law have been to a great extent defeated. Therefore the department has decided to discontinue the said practice in so far as it has been applied to persons appointed to office, and limit it to persons elected to office. All decisions and instructions heretofore given not in harmony with this view are hereby overruled or modified in so far as they accredit such absence as residence to persons not elected to office.

It is not intended, however, to disturb the status of persons who have acted under the rule heretofore prevailing, nor to deny the benefit of the rule to persons who, prior to March 1, 1909, shall have been appointed to such office. Persons having homestead entries, who enter upon public service in nonelective positions to which they were not appointed prior to above date, will be required to comply fully with all of the provisions of the homestead law just as other settlers.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

FRANK PIERCE, *Acting Secretary.*

Mr. CHINDBLOM. Within what time after establishing their residence thereon must they prove up?

Mr. WICKERSHAM. I think within three years.

Mr. CHINDBLOM. So, then, a man might have resided three years on his homestead and complied with the provisions in regard to residence, but if he did not prove up, it is necessary that he continue residing there?

Mr. WICKERSHAM. He has got to reside there until he proves up.

Mr. HUDSPETH. Even if he had been there more than three years?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Was he residing on this homestead at the time of the appointment?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Does the evidence show that?

Mr. WICKERSHAM. No; the evidence does not show that—I think it does not. I think the evidence does not show that, because he would have to reside there. Anyway, his testimony is here on page 38.

Mr. O'CONNOR. As I understand it, his wife was there until a few days before election, then she came down to Ketchikan, and that he himself had been down in Ketchikan acting in the office of deputy United States district attorney.

Mr. WICKERSHAM. From some time about the 7th of March.

Mr. O'CONNOR. Would that appointment annul his homestead rights?

Mr. WICKERSHAM. No; not if he lived there. The residence of the family upon the ground maintained his homestead in good legal order.

Mr. O'CONNOR. A man may himself leave the homestead and leave his wife and family there, and the homestead would still remain his legal residence.

Mr. WICKERSHAM. There is no provision in the homestead laws whereby a man may solemnly declare his residence at one place for the purpose of voting and at another place for the purpose of acquiring title to land. In the case of *Hart v. McHugh* (17 L. D., 176 (177)). McHugh is bound by his solemn declaration, fixing his residence at Spokane, and is estopped from setting up a residence elsewhere at that time. The authorities are all one way on that. So that Regan's home when he voted on the 5th day of November, 1918, was in the Haines precinct, and the home of his wife was there; he had no right to vote anywhere except at this residence in the Haines precinct.

Mr. O'CONNOR. Where had he registered?

Mr. WICKERSHAM. He didn't register anywhere until he voted in Ketchikan, and his wife had made this false oath that she had resided in that precinct 30 days immediately preceding the day of election, when, in fact, it was not true. There is plenty of evidence in the record on that. Now, those are the frauds in the Ketchikan precinct. Those are the ones that we were able to get testimony about. Now, there are individual frauds in southeastern Alaska. Mr. E. G. Morrissey, the secretary to Mr. Sulzer; Mr. Morrissey had resided in Fairbanks, but he had come on to Washington with Mr. Sulzer as private secretary, and when the election of 1918 came on he went out to Juneau to assist Mr. Sulzer in his campaign.

I think it is fair to assume that if Mr. Morrissey was serving the Government here, under a legal appointment, he had the right to go back to his home in Fairbanks, where he had lived several years, and where he came from. He came here to serve Mr. Sulzer as secretary, but he did not do that. He voted in the Juneau precinct. His evidence shows that he had a room at a hotel, and that he had had that room for more than 30 days, but all he had in the room was a lot of books relating to elections, and so on, while he was traveling around the country assisting Mr. Sulzer in his campaign; on election day he happened to be in Juneau, and went down to the polls and voted. He was challenged. His vote was illegal because he was not a resident of that precinct. He did have this room in the hotel while he was out in the precinct at various places, but the room was only for the purpose of keeping books, and that is all he had in the room.

Mr. CHINDBLOM. Is there any evidence that there was a bed, or anything of that sort in the room?

Mr. O'CONNOR. Was he a married man?

Mr. WICKERSHAM. No; he was not a married man. We have considerable testimony, and I think the testimony is clear that he had no right to vote at all?

The CHAIRMAN. You mean he had no right to vote in that precinct, or that he had no right to vote at all?

Mr. WICKERSHAM. No; he had a right to vote in Fairbanks, assuming under the statute that his residence was maintained in that pre-

cinct. We have in this act of 1915 a clause which reserves the right to people of that kind. I will call it to your attention just for a second.

Mr. O'CONNOR. Legislative act of 1915?

Mr. WICKERSHAM. A legislative act of 1915.

Mr. O'CONNOR. I mean, an act of the legislature.

Mr. WICKERSHAM. Yes; the one that I think is void, but there is a clause in here in which it does reserve the right of that kind to some persons, and I think probably there might be some claim that he could vote in Fairbanks under that clause. Here it is:

SEC. 22. The clerk of the court shall provide each polling place with a book to be known as the "Registration Book" on the first page of which shall be printed the qualifications of the voters as follows: "Any person of the age of 21 years or more who is a citizen of the United States, who has lived in the Territory of Alaska one year and in the judicial division in which he or she offers to cast his or her vote 30 days immediately preceding such election, shall be entitled to vote at all elections held therein: *Provided*, That all idiots, insane persons, and persons who have been convicted of an infamous crime are excluded from such right and privilege: *And provided further*, That no person shall be deemed to have lost his residence by reason of his absence while in the civil or military service of the Territory, or the United States, nor while a student at any institution of learning, nor while kept a public charge at any poorhouse or any other asylum, nor while confined in any public prison, nor while engaged in navigation of the waters of this Territory, of the United States, or the high seas; absence from the Territory or said judicial division or city or town wherein election is held, on business, shall not affect the question of residence, provided he or she has not claimed such right elsewhere. One of the said judges shall keep said registration book, and before any voter shall receive his or her official ballot, he or she shall sign his or her name in said book, which signature shall be a statement of said voter to the effect that he or she is qualified to vote under this act."

Now, if he was away in the civil service of the United States he probably had the right to vote in Fairbanks.

Mr. CHINDBLOM. I am not a single man, but if I were a single man and I moved from one precinct to another and had a room there and there was evidence that there were books in that room, and there was no evidence that it was a room for residential purposes, and I had been a resident of the Territory for one year, and I presented myself to vote, would you refuse me a vote?

Mr. WICKERSHAM. Well, if you had been in the precinct——

Mr. CHINDBLOM (interposing). I had a room in the precinct with a lot of books in there.

Mr. WICKERSHAM. Well, if that were all you had in there—a lot of books, I should say, no.

Mr. CHINDBLOM. There is evidence that there was a lot of books there, but that is not conclusive as to the bed. I am taking your word for that.

Mr. WICKERSHAM. There might be evidence that there was a bed there, I do not know, but I don't think there was. I am not sure about that.

Mr. O'CONNOR. All these men, you claim, voted illegally because they voted in the precinct, a precinct in which they had not resided for 30 days immediately preceding the date of election, but they did live within the district?

Mr. WICKERSHAM. His district, or precinct, was in the fourth district, while this was the first.

Mr. O'CONNOR. If this statement is correct, then he violated the organic law and the territorial act also?

Mr. WICKERSHAM. There is no question about that. Now, on election day H. J. Raymond and his wife, S. Jacobsen and his wife, and J. R. McNeil—these five persons voted illegally in Baranof voting precinct while residents of Juneau on November 5, 1918. H. J. Raymond testified, on page 197, of the record [reading]:

Q. State your full name.—A. Harry J. Raymond.

Q. And your place of residence?—A. Juneau, Alaska.

Q. How long have you lived there?—A. I've been in Alaska 23 or 24 years. In Juneau about 16 or 17 years.

Q. You are acquainted with Mrs. Harry J. Raymond?—A. Yes.

Q. That is your wife?—A. Yes.

Q. She has lived with you for several years last past?—A. Twenty-four years, steady.

Q. Both of you lived here in Juneau on the 5th of last November?—A. No. We were at Warm Springs on the 5th of last November.

Q. Where was your place of residence?—A. Well, our residence was in Juneau, but we were living on the boat on the 5th of November.

Q. You and Mrs. Raymond and Mr. Selmar Jacobsen and Mrs. Selmar Jacobsen and Mr. J. R. McNeil, otherwise known as Bob McNeil, left Juneau for Warm Springs on the 10th of October, 1918?—A. Yes.

Q. On the boat *Constance*?—A. Yes; on the boat *Constance*.

Q. And you lived on that boat on that trip?—A. Yes.

Q. And returned at what time?—A. We got back here about the 13th or 14th November, but I had been living on the boat since May—May 10.

Now, Raymond testified that he and his wife voted for Sulzer on November 5, 1918, at Baranof precinct, though their actual residence was in Juneau and had been for more than 20 years; they had only been in that precinct since October 13, only 23 days, and that as mere sojourners.

J. R. McNeil's testimony, on pages 195 and 196 of the record, is perfectly frank. He testified that he had been a resident of Juneau since 1913; that on the 13th day of October, in company with the Raymonds and the Jacobsens he went into Warm Springs Bay, where the election for Baranof voting precinct was held on November 5, 1918. He testified that he went there for his health, to get the benefit of the hot springs located there. He testified: "I voted for Sulzer."

The contestant was not able to get the Jacobsens to obey the subpoena and testify. But the clerk of the town of Juneau produced the town records, which proved conclusively they were actual bona fide residents of Juneau during the time they remained at Warm Springs Bay in October and November, 1918, for the benefit of the hot springs.

Both the Jacobsens made an affidavit before the town clerk of Juneau on March 28, 1919, for the purpose of procuring registration as voters in Juneau at the following city election, and their application was as follows [reading]:

A. B. COLE,

Registration Officer, Juneau, Alaska.

I hereby make application to be registered as a qualified elector to vote at the regular April, 1919, election, to be held in the city of Juneau, Territory of Alaska, on April 1, 1919, and to prove my qualifications, I hereby make the following affidavit.

SELMER JACOBSEN, *Applicant.*

Mr. ELLIOTT. Excuse me, Judge, you said that Jacobsen and his wife, those five names that you mentioned, voted in precincts other than their regular precincts?

Mr. WICKERSHAM. Yes; they voted in precincts other than their regular precincts, all five of them. There is no question about that. Their votes would not have been illegal if they hadn't voted in precincts that they had not lived in for 30 days immediately preceding the day of election. So, I do not need to read that evidence.

Now, Joseph A. Snow gives substantially the same evidence.

Mr. CHINDBLOM. You have the evidence that the other three voted for Sulzer—McNeil and Jacobsen and Mrs. Jacobsen?

Mr. WICKERSHAM. That he had resided in the town of Juneau for six months prior to——

Mr. CHINDBLOM (interposing). I mean on the question of whom they voted for.

Mr. WICKERSHAM. They admitted for whom they voted. There is a statement in here by some person to whom they told it, and then we proved it in this way—on the refusal of the Jacobsens to appear and testify we obtained the testimony of Edward Olsen and Joseph McComb, whose depositions appear on page 248 of the record. They stated that they voted for Wickersham, four of them.

The CHAIRMAN. Does the record show that only four votes were cast?

Mr. WICKERSHAM. Yes; and then we have their depositions, regular depositions of those four persons who voted for Wickersham in that precinct.

Mr. CHINDBLOM. At Warm Springs—and that was in the Baranof precinct?

Mr. WICKERSHAM. Yes; in the Baranof precinct.

Mr. CHINDBLOM. Now you come to Snow.

Mr. WICKERSHAM. Snow says he voted for Sulzer. Snow is a well-known public man there. He has held an office there and is well known. He was on the boat, the steamer *Catherine D*, coming southward, and he went into voting precinct Kake on election day and went up to the polls and voted; then he got on the boat and went on to Juneau.

Mr. O'CONNOR. Was the Territorial act passed with reference to the exercise of the political act for the purpose of giving greater opportunity to voters who would otherwise be denied under the organic law of Congress?

Mr. WICKERSHAM. Well I think there is some claim of that kind, yes.

Mr. O'CONNOR. Was that the real purpose?

Mr. WICKERSHAM. I don't know whether that was the real purpose.

Mr. O'CONNOR. I understood you to say that sometimes a voter may be 300 miles away from his precinct.

Mr. WICKERSHAM. I was 600 miles away and I didn't get a vote on election day; Mr. Grigsby says that he didn't vote on election day, and I have no doubt that that is true. Now, it is getting late, gentlemen, but there are one or two things I want to call to the attention of the committee right at this point. One of them is with reference to

Mr. Grigsby's brief. Mr. Grigsby asked me a while ago if what I was then referring to was in the record, and I had to smile at him, because he has more things in his brief that are not in the record than he has things in the brief which are in the record. I want to call attention to one of them. He has got a lambasting attack on me in here because I have said something about Commissioner Riggs. Page 15 of his brief [reading]:

In an attack upon the Secretary of the Interior and the Alaska Engineering Commission the contestant commented upon the occurrence as follows: Extracts from open letter written by James Wickersham to Secretary of the Interior Franklin K. Lane, dated January 8, 1919. "And when Commissioner Riggs procured Renee Coudert Riggs, his wife, to vote at that election, and Disbursing Officer Cramer procured Florence E. Cramer, his wife, to vote at the same polls, both they and their wives were guilty of the criminal act or acts denounced in the congressional election law, and ought to be punished as if they were plain common people, instead of securing immunity because they were high officials in the Alaska Engineering Commission, and more recently the governor, and secretary to the governor of Alaska."

Then he has quoted the law:

SECTION 27. *Disqualified persons voting.*—If any person, knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this Territory for any office whatever, shall vote at such election, such person shall be guilty of a felony. Both of these women were disqualified and they and their husband knew of their lack of qualifications when they procured them to vote—they were each guilty of a crime if they so voted.

The official records of the election in the Neana precinct show that Cramer and wife and Riggs and wife voted at the same polling place and signed the same registration list; for the purpose of this communication, the evidence is convincing that all were guilty of the crimes denounced in both the congressional and territorial election laws. A grand juror informed me that body attempted to indict Riggs for these alleged violations of the congressional election laws but was prevented from doing so by the court officials at Fairbanks.

The court officials at Fairbanks who prevented such an outrage are to be congratulated. The facts were these: Mrs. Riggs and Mrs. Cramer arrived in Alaska about six months prior to election and on advice of District Attorney Roth that their husband's residences were their own, voted at the election. Whether or not this advice was sound is not the question. The question is, is such a vicious attack on the part of contestant excusable. What character of man is it that will brand respectable citizens as guilty of felonies, for these accusations are renewed against Gov. Riggs in this record, for the sake of bolstering up a flimsy charge of unfairness by the governor as a member of the canvassing board.

Governor Riggs is a native of Maryland; his grandfather was a highly respected citizen of Washington, one of the founders of the Riggs National Bank. The governor himself lived here many years and is well and favorably known. His official career has been reviewed. His wife, Renee Coudert Riggs, is the daughter of the late Frederick R. Coudert of New York City and a lawyer of national and international reputation, honored by the bar of the country.

Mr. and Mrs. Cramer were both born in Maryland and are well and favorably known.

The criminal tendencies of these men and women certainly were not the result of hereditary or early environment. No whisper was ever breathed against the names of these women until the malign influence of the Alaska atmosphere led them to vote against the contestant, if they did so, who now asks that they go down in history as unconvicted criminals by a decision of the House of Representatives in order that he may prevail in his contest.

Well, now, there is not a word in my case about that anywhere. There is no charge in my original notice of contest about that matter. There is not a word in my complaint about it, not a word.

Mr. GRIGSBY. There is in your brief, Mr. Wickersham.

Mr. WICKERSHAM. There is not. I do not mention Mrs. Cramer anywhere, nor Mr. Riggs' name, or this illegal voting except as it is

based upon the testimony of witnesses at Fairbanks. I did not put it in my brief, and I did not put it in my original charges. Because why? It is outlawed. It was in 1916, and the statute of limitations has run against it. Of course, I did not put it in this brief, because it could not come before this committee, and the charge is made that I am doing all this for the outrageous purpose of ruining the reputation of those whom I have not mentioned. Well, now, that is in Mr. Grigsby's brief and I have no chance to answer it except as I answer it here on this floor; and I just want to say that it is admitted to be true, it is admitted by this brief, that these people voted illegally. He brings them in here himself, admits that they violated the law, and then roasts the dickens out of me on account of it. He drags these two good ladies in here by the hair of the head and holds them up as horrible examples and makes a record against them himself; admits that it is true, and then abuses me for it.

Mr. CHINDBLOM. Outside of that, Judge, just on the legal point, is not the wife's domicile where her husband resides?

Mr. WICKERSHAM. Sometimes it is, and sometimes it is the other way.

Mr. CHINDBLOM. I have always understood that the wife's domicile and wife's citizenship follow that of her husband. If the husband were domiciled and had his residence in Alaska for a period of time, is there any decision that his wife's domicile may not be there?

Mr. O'CONNOR. The domicile is the real test of the residence. There is where you vote—at your domicile.

Mr. WICKERSHAM. Here is the situation, gentlemen: If you will examine the city directory for the District of Columbia you will find that in 1909, at page 1060, Thomas Riggs, jr., lived at 2111 S Street NW., and coming down from year to year, you will find that he lived at 2106 F street NW., until 1912. The directory shows his residence there at that time. In 1913 something happened; he got married.

Mr. O'CONNOR. Something did happen!

Mr. WICKERSHAM. And in 1914 his home was at 1731 Twenty-first Street NW., in this city; and at page 1074, of the 1915 city directory, he is listed as a "topographer, Geological Survey," and then later he is shown as "civil engineer, residing at 1731 Twenty-first Street NW., in the city of Washington. Now, he lived there with his wife. They both lived there in the city of Washington; and, more than that, all this time they were doing business as husband and wife, and a child was born to them on March 26, 1914. The birth of the child is reported on March 26, 1914; the father's full name, Thomas Riggs, jr., residence 1731 Twenty-first Street NW., color, white, age last birthday, 40 years; birth place, Maryland; occupation, civil engineer. Maiden name of wife, Renee Coudert, age 39 years; birth place, New Jersey; occupation, domestic. Here is all the information, certificate of birth, under seal of the court, etc.

Mr. GRIGSBY. There is no dispute about that.

Mr. WICKERSHAM. There is a dispute about it. They resided here at 1731 Twenty-first Street, NW., in the city of Washington.

Mr. O'CONNOR. Did they vote in the 1918 election?

Mr. WICKERSHAM. Yes; and they lived here in May, 1918. Mr. Riggs would go to Alaska in the summer time, and would come out in the fall. That is what he always did.

The CHAIRMAN. He was commissioner, was he not, of the Alaska Railroad?

Mr. WICKERSHAM. Yes; and under the law his residence was reserved to him here in the city of Washington, where his wife and children live. Another child was born December 25, 1915. Here is the report of the birth certificate, and all that sort of thing.

The CHAIRMAN. When did they move from here?

Mr. WICKERSHAM. In May, 1918—it is admitted here in the brief—about 6 months prior to the election.

The CHAIRMAN. You claim that her vote was illegal?

Mr. WICKERSHAM. And his, too.

Mr. GRIGSBY. In that connection, he did not acquire a residence in Alaska because he was not there a year.

Mr. WICKERSHAM. He went backwards and forwards all these years and his home was here. And when he went out there and voted that day, and his wife, they both voted illegally, as Mr. Grigsby says here. They had only been there six months. That is admitted.

Now, with regard to this other fellow, Cramer, he married this other girl. I am not saying anything about that. Grigsby dragged them in here himself. Here is the marriage license, issued to George Fenton Cramer, of Washington, D. C., and Florence Vance, of the same place, on the 11th of February, 1916. They have this wrong—it is not 1918.

Mr. HUDSPETH. Then we have nothing to do with that?

Mr. WICKERSHAM. No.

The CHAIRMAN. Then, aside from your self-defense, what is that brought in here for?

Mr. WICKERSHAM. It is brought in for the purpose of answering this attack on me. There is another matter in the record to which I want to call the committee's attention. Harry Shutts, page 76 of Mr. Grigsby's brief:

"In the hearings before the Committee on Elections, No. 3, in this matter, on page 42 of the printed record thereof, is the affidavit of Harry Shutts, as follows. [Reading:]

UNITED STATES OF AMERICA,

Territory of Alaska, third division, ss:

Harry Shutts, being first duly sworn, upon his oath says: I am at present a sergeant, first class, Motor Transport Corps, United States Army, and stationed at Valdez, Alaska; that in the fall of the year 1914 I was a corporal in the Signal Corps of the United States, stationed at Fairbanks, Alaska; that some time during the fall of 1914 and a short time before the election held in the month of November, 1914, for the purpose of electing a Delegate to Congress from Alaska, I had a conversation with Mr. James Wickersham, then a candidate for election as Delegate to Congress from Alaska; during said conversation I asked Mr. Wickersham if I was legally entitled to vote at the coming election for Delegate to Congress on account of my being an enlisted man in the United States Army. Mr. Wickersham stated that the fact that I was an enlisted man in the United States Army did not disqualify me from voting; that I certainly was entitled to vote if I had been in Alaska for one year; and that it was my duty as a citizen to vote. (Signed) Harry Shutts. Subscribed and sworn to before me this 2d day of June, 1919. (Signed) Frank J. Hayes, notary public for Alaska. My commission expires May 19, 1921.

Now, when we had the resolution up for hearing before this committee Mr. Grigsby read that affidavit. That was the first time I ever heard it. I did not know there was such an affidavit in existence until he read it at that time. It was read and I suppose taken

into the record here, but Harry Shutts was never called as a witness in this case. This affidavit was never offered in any deposition in this case and the only place that it appears in this record anywhere is in this statement before this committee on that resolution and in this brief. And he thinks now that I ought to be bound by an affidavit like that, an affidavit of that kind. I think I ought not, and thinking that I ought not, I want to make an affidavit in answer to it, and here is my affidavit, which is just as good as Harry Shutts's, and is just as illegal as Harry Shutts's, and you have no more business to hear it than you have to hear Harry Shutts's; but having heard Shutts's affidavit, I think you ought to hear mine, which is very short [reading]:

UNITED STATES OF AMERICA.

District of Columbia, ss:

James Wickersham, being duly sworn, deposes and says: That affiant first heard about the affidavit of Harry Shutts, printed on page 42 of the committee's hearings, on July 12, 1919, when it was so read to the committee by Mr. Grigsby; that prior to that date and prior to the date of the affidavit, at Valdez, Alaska, this affiant made special effort through his attorneys to secure a truthful and full deposition from said Shutts in relation to his fraudulent and illegal vote at said election will more full appear from the record of that effort found on pages 225-228 of the record of depositions in this case; but said Shutts refused to be sworn or testify and never has given any deposition in this case, under oath, on notice and cross-examination. That affiant says it is not true, but is false and untrue, that he told said Shutts in 1914, or at any other time, that said Shutts was a qualified elector in Alaska, being then a nonresident enlisted soldier from another State. If affiant ever had any conversation with said Shutts about that matter, he has not correctly given the purport of affiant's statements in that affidavit. James Wickersham.

Subscribed and sworn to before me this 22d day of March, 1920.

M. W. PICKERING.

Notary Public in and for the District of Columbia.

That affidavit is put in here with no more authority than he put the other affidavit in here—not a bit—but Shutts's affidavit is put in, and then it is followed by a long string of stuff saying that I advised these soldiers to vote, and then saying that I am bound by this situation. Now, I want to call your attention to the effort that was made to get this fellow, Harry Shutts, to testify, pages 225-228 of this record, beginning on page 227 of the record. At Valdez, Alaska, in May, I went out there to take testimony after Mr. Sulzer's death, because under the statute I had to take my testimony within 90 days. Mr. Sulzer was dead; I could not give him any notice, and I had to proceed without him. What I did then, with respect to Shutts and these soldiers, was that I had a subpoena issued by a notary public and served through a United States marshal, requiring all these soldiers to appear before a notary public and have their depositions taken; they all did appear, and Mr. Grigsby's present attorney and agent, Mr. Dimond, appeared with them as their attorney. When we undertook to take their testimony Mr. Dimond objected; in fact, made a lot of objections. On page 228 of this record the notary public proceeded with the matter. The notary public said [reading]:

You may call them.

Mr. Reed then called them, and the record is as follows:

Mr. REED. Mr. Harry Shutts; is he present?

[Mr. Shutts rises.]

Mr. DIMOND. Sit still, Mr. Shutts. I advise you gentlemen not to answer to your names at all and not to be sworn and not to give any testimony.

Mr. REED. Do you refuse to be sworn and testify in this matter?

Mr. SHUTTS.—[No response.]

Mr. REED. Do you want the record to show that you refuse, or that you decline to answer that question? [No response.]

Mr. REED. Emil Lains; is he present?

Mr. DIMOND. Mr. Lains is present.

Mr. REED. Mr. Lains, do you refuse to be sworn and testify? [No response.]

Mr. REED. Is Mr. Kott present?

Mr. DIMOND. He is present

Mr. REED. Do you refuse to be sworn and testify? [No response.]

Mr. REED. Charles A. Agnetti?

Mr. DIMOND. Mr. Agnetti is also present.

Mr. REED. Do you refuse to be sworn and testify? [No response.]

Now, Shutts would have testified if it had not been for Mr. Grigsby's attorney. Mr. Grigsby drags that entire thing in here when it has not been covered by depositions, and it is not here in any way, shape, or manner except as I have told you. This affidavit of Shutts was taken on the 2d day of June, 1919, before Frank J. Hayes, notary public, one of Mr. Grigsby's supporters and friends there.

Now, on page 78 appears the affidavit of C. R. Odle [reading]:

UNITED STATES OF AMERICA,

Territory of Alaska, Third Division, ss:

C. R. Odle, being first duly sworn, upon his oath says: My name is C. R. Odle. I am at present quartermaster sergeant in the Quartermaster Corps of the United States Army. I reside at Valdez, Alaska, and have resided there since July 27, 1916. I first arrived in Alaska on September 5, 1914. At that time I was in the Signal Corps of the United States Army. I was discharged from the Army at St. Michael, Alaska, on December 17, 1914. I reenlisted in the Army at the same place on February 3, 1915. I was married in Alaska and have my home here. I am one of the persons named in a certain subpoena dated May 9, 1914, issued by Isaac Hamburger, a notary public of Alaska, requiring the persons named therein, including myself, to appear before him at the courtroom of the district court for the Territory of Alaska, third division, at the hour of 10 o'clock in the forenoon of the 14th day of May, 1919, to testify in a certain alleged contest for the office of Delegate from Alaska to the House of Representatives then alleged to be pending in the said House of Representatives, and wherein James Wickersham was said to be the contestant. Such subpoena was served upon me by the United States marshal for the third division of the Territory of Alaska on May 9, 1919. Shortly after the service of said subpoena upon me I met the said James Wickersham on the street at Valdez, Alaska, and Mr. Wickersham asked me if I had received such subpoena.

I replied that I had. He thereupon said that he had looked over the register of the Democratic primary election held at Valdez, Alaska, in the spring of the year 1918 and that he had failed to find my name thereon, and that he had been informed from a Republican source that my politics were Republican. I replied in substance that I was a Republican, but was not a supporter of his. I then asked him why he had subpoenaed me, and he said that having come to Alaska as a soldier I had no right to vote, and that voting by soldiers was illegal. I asked him why it was illegal now, when a representative of his in 1914 had informed the soldiers generally at St. Michael that it was not only their right but their duty to vote, and he said that if I would look into the report of a certain committee of Congress in the contest between himself and Mr. Sulzer for the seat for Delegate from Alaska under the election held in November, 1916, I would see that the voting by soldiers in Alaska had been held illegal and that a ruling had been made by the committee to that effect. I told him that I did not see why we should be taken up and made "hoobs"

of when he hadn't started a contest, and that if he did take me up there I would refuse to state who I voted for. He said, "Well, you needn't appear when the rest of the boys appear up there, and I will tell Mr. Reed about our conversation," Mr. Reed being his attorney and representative at Valdez.

In obedience to said subpoena I appeared before Mr. Hamburger, the notary public, in the court room of the district court at Valdez at 10 o'clock a. m. on May 14, 1919. Mr. J. L. Reed, of Valdez, was present and stated that he represented Mr. Wickersham. Before any further proceedings were taken Mr. Reed announced that Capt. M. H. Faust, who had also been subpoenaed, and myself would be excused and that our depositions would be taken. Further affiant sayeth not.

C. R. ODLE.

Subscribed and sworn to before me this 14th day of May, 1919.

[SEAL.]

ANTHONY J. DIMOND,
Notary Public for Alaska.

Commission expires February 13, 1921.

This man Dimond is the man of whom I just read to you about, and who told Shutts not to testify, and who told everybody there not to testify, except these men who were excused. Now, I say to you, Mr. Chairman, that this does not appear anywhere in the record; it is printed in this Grigsby brief with a lot of stuff of that kind. I want to present my affidavit in answer to that. I did have a conversation with that man. [Reading:]

UNITED STATES OF AMERICA.

District of Columbia, ss:

James Wickersham, being first duly sworn, deposes and says in answer to the allegations contained in the affidavit of C. R. Odle, found on pages 78, 79, 80, and 81 of contestee's brief in this contested-election case:

That affiant had no knowledge or information that said or any affidavit had been made by said Odle until affiant first saw it in said brief when served on affiant on March 2, 1920.

It is admitted that Odle was one of the Signal Corps soldiers served with a subpoena at Valdez, Alaska, on May 9, 1919, to appear before Isaac Hamberger, notary public, to testify in this contested-election case. This affiant at that time was wholly unacquainted with the said Odle personally; admits that on or about May 9, 1919, after the service of the subpoenas upon about 14 soldiers who had voted illegally at Valdez, affiant was accosted on the street of Valdez by a person in military clothes who introduced himself to affiant as Odle, and who asked to have a talk with affiant; he said his name was C. R. Odle; that he was a soldier; that he had been subpoenaed; that he had formerly been classed as a Republican but had not supported me at the election on November 5, 1918, but had voted for Charles A. Sulzer; he then said that he wished to appear in obedience to the subpoena so served on him, and testify to the truth, but that he dared not do so; that if called to testify he would refuse to do so, because if he did he would be abused and otherwise mistreated by the other Signal Corps men and soldiers who had voted illegally, and who did not intend to testify on May 14, 1919, in answer to the subpoena.

He said the Signal Corps men and soldiers at Valdez had all voted for Sulzer on November 5, 1918, but that they were advised not to testify and he did not want to do so if they did not, and he appealed to me for advice as to what he should do.

Odle is rather a small man, anemic in appearance, and evidently not an aggressive or pugnacious person; he told me he was married, and that also seemed to make him more timid; after some little consideration and listening to his story, my sympathy was aroused for him, and I told him that we would excuse him from testifying until after the others had testified, and that if they appeared and testified he could be called later to tell his story. He seemed very grateful to me for giving him this chance to escape from an embarrassing position, and readily agreed to my suggestion, and left me. That is the fair substance of the whole of my conversation with Odle, and the coloring of his affidavit and his statements referring to the right of soldiers to vote in 1914 are all untrue and wholly false, and evidently put in the affidavit by A. J.

Dimond, the attorney who appeared for the Signal Corps men and soldiers at Valdez on May 14, 1919, and instructed, urged, and commanded them not to answer questions, as he has done at all times since.

JAMES WICKERSHAM.

Subscribed and sworn to before me this 22d day of March, 1920.

M. W. PICKERING,

Notary Public in and for the District of Columbia.

Now, that is subscribed and sworn to and has no more right to be before this committee than the Odle affidavit has, and it was offered merely in answer to that Odle affidavit, which was put in Mr. Grigsby's brief for the purpose of loading it down with a lot of stuff that is not in the record and that is not true. Odle could have been called, but he admits here that he did not vote for me. When he told me that he didn't vote for me he also told me what the situation was. He said if he came in there and did not vote as all those other soldiers did he would be afraid; I excused him for that reason, with the understanding that he was to be called if the other men did come in and testify, but they did not come in and testify. They all refused. Of course, it would not do any good to call Odle, because he told me that he would not testify.

The CHAIRMAN. We will adjourn for the evening.

(The committee thereupon adjourned.)

COMMITTEE ON ELECTIONS No. 3,
HOUSE OF REPRESENTATIVES,
Tuesday, March 30, 1920.

The committee met at 8.15 o'clock p. m., Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. Gentlemen, there is a quorum present, and we will proceed.

STATEMENT OF HON. JAMES WICKERSHAM, CONTESTANT—
Resumed.

Mr. WICKERSHAM. Mr. Chairman, when I left off last night, or this morning, I was considering some objection to Mr. Grigsby's brief. I want to go back just a moment to take up for a short time something relating to these rejected ballots.

Mr. Grigsby, in his brief, declares that there was every opportunity given to my attorneys at the time of the canvass of these votes to see these rejected ballots; I want to go over that just for a moment. It will take but a short time.

I call the attention of the committee to the statement of my attorney as I read it to the committee last night, saying at the time of this finding of the canvassing board, after consideration of those ballots, that there were 9 majority which had been cast in my favor, and after having received a new dispensation from Mr. Grigsby in the way of an opinion this board ceased to consider them.

Now, my brief stated that I did not have an opportunity to examine them, and Mr. Grigsby comes back at me rather roughly about that; I want to call the attention of the committee to the record with respect to that. I call the attention of the committee to page 742 and some following pages of the record with respect to that.

Beginning back here, at about page 730, and in that neighborhood, are the proceedings of the canvassing board, and on page 742 they are considering the Perseverance precinct. I will just read from a part of those returns to show how my attorneys were treated in that matter [reading]:

Mr. RUSTGARD (he was my attorney). This certificate of result gives Wickersham 17. Is that correct?

The CHAIRMAN. The certificate of result is wrong. Do you want to count the ballots?

Now, Mr. Grigsby puts that in the record to show that there was an effort made on the part of the chairman of the board to permit my attorney to count the ballots. Aas a matter of fact, that was sarcasm. [Reading:]

Do you want to count the ballots?

Mr. RUSTGARD. No; I just call attention to the fact that the certificate of result, certified to by the judges, certifies that the results are that Sulzer received 19 and Wickersham 17 votes.

The CHAIRMAN. Yes; but the tally shows Sulzer 19 and Wickersham 15. Now, if you desire, we will run over those ballots promptly and count the Wickersham votes—any courtesy or satisfaction we can give.

Now, if you know the governor, you know how he said that. Mr. Rustgard said [reading]:

No; I don't ask anything of the kind.

Now, at page 745, the chairman says, "Well, I'm the only member of the board who has seen how that ballot is voted." He is putting it up to the canvassing board as to what they are going to do, but he tells them, "I'm the only member of the board who has seen how that ballot is voted." And Mr. Davidson, another member of the board, "And I don't know what that—it isn't because I am for either one, it's principle." A little farther down [reading]:

The CHAIRMAN. Well, it seems to me that a motion is in order whether to count this ballot or whether to refer the matter to the Attorney General.

Mr. DAVIDSON. I move that the ballot be counted.

Mr. GARFIELD. I am not prepared to second that motion. I would prefer, owing to the closeness, apparent closeness of the election, that we proceed with every caution necessary, in order to have a fair and impartial canvass of the vote and that we may act advisedly on the question from the legal standpoint of the authorized legal adviser of the Territory. I would move that these returns and all subsequent returns which we may examine, up until the time that we can secure that advice, be laid aside for further action by the board.

The CHAIRMAN. I am inclined to agree with you, Mr. Garfield, because this may come up a great many times.

And right there they changed the method of counting those votes. That is on page 745.

The CHAIRMAN. And the fact that they did not count the votes as far as this committee is concerned, is immaterial, is it not?

Mr. WICKERSHAM. Yes; I think so, if the committee will now take up and count the ballots. I am only calling attention to this, that the chairman of the board was sarcastic, and I am only calling the attention of the committee to that so as to show the manner of going over these ballots. I do not think it is necessary to go over that. I have tried to put the matter before the committee from the legal standpoint that these ballots had not been counted, and I also said to the committee that my attorneys were not given a fair opportunity to see them, and that we are therefore very much in the dark about it.

Mr. HUDSPETH. Do you refer to the ballots of this particular precinct?

Mr. WICKERSHAM. That is only one of them.

Mr. HUDSPETH. Do you want them all counted?

Mr. WICKERSHAM. Only those that were wrong. I do not want them all, only those that were wrong.

The CHAIRMAN. I suggest, judge, that on the question of counting the ballots, from the legal phase of it, that you should be heard here. Something has been said about whether we should count the ballots or not, and I think whatever there is to offer on that you should offer. But now as to the fact that they did not count the ballots——

Mr. WICKERSHAM. That is conceded.

The CHAIRMAN. And that they refused to count the ballots under the advice of the attorney general I assume that there is possibly no reason for going into that, as it would be immaterial anyway unless they had been counted and tallied properly.

Mr. WICKERSHAM. Well, I think probably that is correct, and Mr. Grigsby, in his opinion to the board, said that the board had no authority to count them, and only Congress had the authority.

Mr. GRIGSBY. When you refer to counting the ballots do you mean retallying them or counting the rejected ballots?

The CHAIRMAN. I mean the rejected ballots.

Mr. GRIGSBY. I was wondering if at any time it is in order to have them examined.

Mr. ROWAN. There is no contention that he has the authority to examine them.

Mr. GRIGSBY. Any time he wants I am willing that they should be examined.

Mr. ROWAN. There is no issue on that point.

The CHAIRMAN. Then, as I understand, both of you are willing that the committee shall take these rejected ballots and examine them and pass upon their validity?

Mr. WICKERSHAM. Yes; I do.

The CHAIRMAN. You agree to that?

Mr. GRIGSBY. Yes.

Mr. CHINDBLOM. And as to all other ballots, except the returns?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. How is that?

Mr. CHINDBLOM. All other ballots except the returns.

Mr. HUDSPETH. The returns were made?

The CHAIRMAN. I understand you do not contend that——

Mr. GRIGSBY. I do not know about that, Mr. Chindblom, now. My opinion——

Mr. CHINDBLOM. I am just making the inquiry.

Mr. GRIGSBY. I contended this, in my opinion to the canvassing board, that if they had the right to count a ballot wrongfully rejected by the judges of election they certainly would also have the right to reject a ballot wrongfully counted by the judges of election. I think that would follow. But I do not know that there is any allegation either in my pleadings or in Mr. Wickersham's that there were any ballots wrongfully counted.

The CHAIRMAN. That is, the ones that were tallied and counted?

Mr. GRIGSBY. I do not think there is any such allegation.

The CHAIRMAN. Then if there is no need, I think we can save a good deal of time and get down to the real question if both sides agree that we shall count all rejected ballots, and that we shall take the returns as they are sent here by the board, except as to uncounted ballots.

Mr. WICKERSHAM. Yes.

Mr. ROWAN. And the points raised by the contestants at these various places.

The CHAIRMAN. Those are not involved in the question of ballots.

Mr. CHINDBLOM. They are not involved in the count.

The CHAIRMAN. No; not in the question of ballots. Of course, the illegal votes, if there are any, those are raised.

Mr. GRIGSBY. I am not sure about the allegations. I do not remember.

The CHAIRMAN. I assume now that your brief did not raise the question and that Judge Wickersham did not raise it.

Mr. GRIGSBY. And that is the only way it could be raised. The ballots are all here.

The CHAIRMAN. I assume that; but we do not want to go into the question if the question is undisputed. We want to get down to the point at issue and let the committee determine that—and I think we are getting it—so that we will know what the controversy is.

Mr. WICKERSHAM. I assume that I am the only one that can raise any question on that. I have no doubt but that many illegal ballots were counted and I got the worst of it. But I do not raise the question, because if you were to carry it to the end you would have to count them all.

Mr. ELLIOTT. How many ballots were cast?

Mr. WICKERSHAM. About 9,000.

Mr. GRIGSBY. I am willing that the whole ballots be recanvassed.

The CHAIRMAN. The committee would not go into a question that is not involved in the controversy.

Mr. WICKERSHAM. I have not asked that.

The CHAIRMAN. That is a matter for the committee to determine.

Mr. O'CONNOR. Is there any way of determining by whom these rejected ballots were cast?

Mr. WICKERSHAM. Possibly not.

Mr. O'CONNOR. I was just thinking that maybe some of the persons whom you are mentioning now whose votes you claim were illegally cast might be among the rejected ballots, but as you say there is no way of ascertaining who cast them, there is no use of pursuing that.

Mr. WICKERSHAM. There is another charge in view with respect to the Kramers and the Riggses. I offer the marriage license of the Kramers here to show that they were married.

The CHAIRMAN. This is in 1916?

Mr. WICKERSHAM. 1916.

Mr. CHINDBLOM. What has that to do with this election?

Mr. WICKERSHAM. All I was going to show, Mr. Chairman, was that last night I said something in answer to Mr. Hudspeth and probably misled him to believe that those votes were cast in 1918.

The CHAIRMAN. He corrected that.

Mr. WICKERSHAM. I wanted to correct that; that is all. I do not want any mistake about that, because the Riggses and Kramers voted in 1916.

Mr. HUDSPETH. I asked the question if they did vote in 1918, and you said no.

Mr. WICKERSHAM. I knew that was the case, and I wanted the record correct. They are not involved in this case, and I was criticizing Mr. Grigsby for bringing that up in his brief.

Mr. GRIGSBY. Before you go ahead, did you put in evidence the history of the Riggs family?

Mr. WICKERSHAM. I do not have any history of the Riggs family.

Mr. ROWAN. That was only read from.

Mr. GRIGSBY. It went into the hearings.

The CHAIRMAN. I have no doubt it went into the notes, and under my objection.

Mr. WICKERSHAM. It only went in because I had to make some sort of answer to what was in his brief.

This Riggs and Kramer matter in 1916 I was trying to explain, and the Shutz affidavit, which is not in the record, and the Dooley affidavit, which was put in in the same way. I called all those to the attention of the committee last night, because they are in the brief.

Mr. ROWAN. We have heard of that.

Mr. WICKERSHAM. Now, there is another affidavit in this record that is in the same shape, and that is the Foster affidavit, on page 365 of this record. And I wish the gentleman would look at that for a moment. There is the notary public at Cordova, Alaska, and he was the notary public before whom Mr. Grigsby's agents and attorneys took the depositions of some witnesses at that time, and at the end of the deposition of one Walker this is put in [reading]:

In connection with the testimony of witness, George E. Walker, the counsel for contestee desires to introduce as evidence the following affidavit: Contestee's Exhibit B.

It is a mere affidavit of Mr. Frank H. Foster, in which he swears to a lot of things before Noaks, Mr. Grigsby's attorney for that place, and it is put bodily into the deposition without Mr. Foster having been sworn or his deposition taken. It is entirely ex parte. His deposition was not taken; we had no opportunity to cross-examine him in any way, shape, or form. This affidavit is merely chucked into the record. Now, if Mr. Foster had at any time appeared, or was placed on the witness stand, and had made any sort of affidavit in the matter, it would justify this affidavit being put in, and he could have been asked to explain some difference between his testimony that he had given, and an opportunity could have been given to cross-examine him, then there might be some reason for putting it in. But out of whole cloth they chucked that into the record.

Mr. HUDSPETH. Was your attorney present?

Mr. WICKERSHAM. Yes; my attorney—I did not have an attorney. I was telegraphed to go on there and I got a tavern keeper to go down to appear for me. I could not reach there. The boats run so infrequently up there that you can not get around only once a month. I telegraphed to this man to appear for me. He is not a lawyer and did not know enough to object. I think he did object to that. But whether he did or not, the testimony was taken and ought not to be considered by this committee in any way.

Now, there are two depositions right at this point that I want to call attention to, depositions of this man Walker and John Moe. They have testified to a lot of facts—or to a lot of alleged facts—as to what people told them, and Walker and John Moe are about as worthless scamps as there are in Alaska. There is testimony to that effect, by me at least, in the record, and they have testified with respect to a lot of men voting, or four or five. Walker testified to voting at Cordova, and he also said that they were Wickersham men, or something of that kind.

Mr. GRIGSBY. Excuse me. Walker does not testify that anybody told him how anybody voted. If they did, point it out in the record.

Mr. WICKERSHAM. To what does he testify?

Mr. GRIGSBY. That certain men testified in Cordova.

Mr. WICKERSHAM. That is all he testifies to?

Mr. GRIGSBY. Yes, sir.

Mr. WICKERSHAM. If that is all he testified to it is not so material. Then who does testify as to how they voted? That is right. He is right about that. It is Walker who testifies that they voted. It is Frank Foster who testifies how they voted. There is no doubt as to what Frank testifies in his affidavit.

Mr. GRIGSBY. That is right.

Mr. WICKERSHAM. As to how they voted. In his affidavit he says that he is an attorney at law residing at and practicing his profession at Cordova, Alaska. That "I was in the town of Cordova, Alaska, on the 4th and 5th days of November, 1918; that I was taking quite an active part in the election that took place on the 5th day of November, 1918, at which said election a Delegate from Alaska to Congress was elected; that my activity was exerted on behalf of the Republican Party"—but not on my behalf. [Laughter.] That is another one of the scamps that does work of that kind for the Guggenheims there (reading):

That I know James Wickersham, who was a candidate at said election for Delegate to Congress; that I was also acquainted during his lifetime of Charles A. Sulzer, who was also a candidate at said election for Delegate to Congress.

That on the evening of the 4th day of November, 1918, I had a conversation with J. B. Hudson, in the Alaskan Hotel, town of Cordova, at which conversation Robert Gottschalk was also present; that Robert Gottschalk was at said time a strong supporter of James Wickersham; that in this conversation the said J. B. Hudson stated to me in the presence of Gottschalk that he, Hudson, intended to vote for James Wickersham for Delegate to Congress at the election to be held in Cordova the following day.

That I am acquainted with Mr. William Zacharias and with Mrs. William Zacharias, who voted at the election held in Cordova on the 5th day of November, 1918, for the purpose of electing a Delegate from Alaska to Congress; that I was present at the voting place when said election was held in the town of Cordova at the time William Zacharias, Mrs. William Zacharias, and Mrs. A. L. Spencer appeared at said voting place, and saw them and each of them cast their ballot at said election; that shortly thereafter, within 5 or 10 minutes after said parties had voted, Mrs. William Zacharias stated to me that herself, her husband, William Zacharias, and Mrs. A. L. Spencer voted for James Wickersham for Delegate from Alaska to Congress. Among other things in said conversation, she used the following language: "Well, there are three good Wickersham votes."

Now, later on, we found Mrs. Spencer.

The CHAIRMAN. That is the affidavit of Frank H. Foster?

Mr. WICKERSHAM. Yes; and he was not a witness in the case at all. They saw apparently that there was nothing to George Walker's

testimony, except that these people voted, and he knew them; that they came from some other precinct.

The CHAIRMAN. Is there any other testimony in the record with reference to how any of those persons voted?

Mr. WICKERSHAM. Yes; we found Mrs. Spencer down in Seattle and put her on the witness stand. She testified in rebuttal that she never told the people anything of the kind, and that the Zachariases were with her at all times while they were there, and that they did not tell whom they voted for.

The CHAIRMAN. That is the case, is it not, about which Mr. Grigsby says in his brief that you were mistaken in the laying of your foundation, and that it was not Walker they talked to but somebody else? Is that correct?

Mr. WICKERSHAM. No; I think not.

Mr. GRIGSBY. There is nobody that swore he had that conversation with Mrs. Spencer. Mrs. Spencer testified in Seattle denying certain conversations which nobody swore that she had.

Mr. WICKERSHAM. But she testified she was with the Zacharaises all the time while they were there from the time of voting until they went away, and she knows that they did not do anything of the kind.

The CHAIRMAN. This is the case that was referred to by Mr. Grigsby in his brief, that you did not show that that conversation referred to there in that affidavit did not take place?

Mr. WICKERSHAM. Possibly.

The CHAIRMAN. Now, as I understand you, there is not any further testimony as to how these people voted except that affidavit?

Mr. WICKERSHAM. I understand that is true. That is the only testimony, and that affidavit was put in surreptitiously. It is ex parte. The man was not sworn as a witness and gave no testimony. I am calling attention to it in view of these other things.

Mr. O'CONNOR. Was she examined by your attorney in Seattle?

Mr. WICKERSHAM. Mrs. Spencer; yes.

Mr. O'CONNOR. Did you ask her how she voted?

Mr. WICKERSHAM. Yes; and she refused to tell. She said that she was a great friend of the Sulzers, visited with them, had their pictures, and said that she knew me and was very friendly to us, and declined to tell.

Mr. CHINDBLOM. She had friends in both places?

Mr. WICKERSHAM. She had friends in both places.

Now, I am going to call your attention to these illegal votes at Cordova, after a while, in connection with the testimony of Mr. Grigsby himself, who was in Cordova at that time. There was a lot of crookedness in Cordova that day.

Mr. ROWAN. Dispose of that now that you are on it.

Mr. WICKERSHAM. And Mr. Grigsby was here. Yes; we can probably dispose of that right now.

Mr. ROWAN. Then we will not have to come back to it.

Mr. WICKERSHAM. Turn back here to Mr. Grigsby's deposition in connection with that other matter.

The CHAIRMAN. This is the Cordova precinct?

Mr. WICKERSHAM. This is the Cordova precinct. Now, at page 546 is the testimony of Mr. Grigsby. He testifies down here that he was in Cordova that day. He says, "In Cordova it is now claimed

that the town of Cordova went Wickersham for the reason that a great many Wickershamites from the outside precincts of Cordova were permitted to vote in Cordova." Now, we begin to see in a measure how they were permitted to vote. [Reading:]

It was agreed there, I believe, by the party managers that no challenges would be interposed on that ground, and there was a general sentiment throughout the Territory that the territorial law was right; that a man should be permitted to vote anywhere in his division that he happens to be on election day, especially since at that time of the year, the close of the mining season, is when men are more or less in transit.

Then I asked the question (at p. 547) [reading]:

By Judge WICKERSHAM:

Q. But you have given an opinion to the governor of the Territory of Alaska that the law was invalid and void because it was in conflict with the organic act?—A. That was since the election.

Q. You think it is correct?—A. That was certainly my opinion when I gave it.

Now, in addition to his opinion, if you will examine the returns in these cases, you will find in every instance that there is notice given to all of the election officers by Mr. Grigsby officially as attorney general, and it is posted or printed on the printed election records the officials had with respect to the qualifications of the electors, so that there is no question about Mr. Grigsby's opinion at that time on that question. [Reading:]

Q. You say there was an agreement at Cordova wherein everybody was allowed to vote (there is a mistake in the print. It should be who) who lived in the division for 30 days; how do you know that?—A. I heard it talked of.

Q. Somebody told you?—A. I was there when such a stipulation was made.

Q. On election day?—A. Yes; on election day.

Q. When; at what time on election day?—A. This last year; 1918.

Q. Who made the agreement there at Cordova? Who was speaking about it?—A. The matter was discussed between Mr. Jimmie Gallen and Deerer.

That is Foster instead of Deerer?

Mr. GRIGSBY. No, sir.

Mr. WICKERSHAM. Who was it?

Mr. GRIGSBY. Why, he testified it was Gerrie. I do not know how the stenographer wrote it.

Mr. WICKERSHAM (reading):

Bud Sergeant and some others, and they agreed not to interpose any challenges on that ground.

Q. They were all Democrats?—A. Mr. Gallen had always been a Republican.

Mr. Gallen is another one of those Republicans.

Now, there is Mr. Grigsby's own admission that he and these other people made an agreement at Cordova on election day that everybody that came along could vote.

Mr. HUDSPETH. What ticket were you running on?

Mr. WICKERSHAM. The Republican ticket.

Mr. HUDSPETH. You refer to these as being Republicans?

Mr. WICKERSHAM. There are a lot of Republicans who support the Democratic ticket in Alaska just as there are, thank God, a lot of Democrats who do the other thing. Our line of cleavage is not always strictly observed.

Now, here is an agreement between Mr. Grigsby, or at least he says he was present when it was made, and it is their purpose to vote

everybody that came along. Of course, that agreement was in violation of the law. It violates the statutes of Congress providing for the voting of only those who are qualified to vote. It was a conspicuous violation of the election laws and Mr. Grigsby was a party to it. And yet through this agreement with these people, thus getting these outsiders to vote, he now comes in and denounces the whole proposition and wants to throw them out. Now, I say that the statement of Mrs. Spencer in consideration of a matter of that kind, when Mr. Grigsby admits that he was present, and admits that he was a party to that contract, is much better than Mr. Grigsby's statement about it, although he does not say anything about it in his testimony.

Mr. GRIGSBY. May I ask a question?

Mr. WICKERSHAM. No.

That is the situation at Cordova. Now, there were some votes cast there they say under certain circumstances that were considered by this little bunch of what he calls leaders, and that they all agreed that they should be voted. Now, I think the presumption is that they voted for themselves, that they did not vote for me, because we could only find one of them, Mrs. Spencer, and her testimony is in this record, and she says that story is not true that they admitted that they voted for me, and that Frank Foster's story is not true, and Frank Foster did not dare to go on the witness stand and be cross-examined. He was one of the gentlemen who was there, although he is very careful not to say that he supported me, because he did not, and Mr. Grigsby knows he did not.

Mr. GRIGSBY. I know that he did.

Mr. WICKERSHAM. I know that he did not, and that is not in the record and this committee is not bound by it.

Mr. GRIGSBY. Just do not state what I know and we will not have any altercation.

Mr. WICKERSHAM. Now, so much for Frank Foster. As for John Moe, he was an old saloon keeper in Fairbanks. He kept a saloon in the red-light district for several years. He is of that type.

Mr. ROWAN. What were his politics?

Mr. WICKERSHAM. John is a Democrat. [Laughter.]

And just as soon as the prohibition law went into force in Alaska John was appointed a prohibition officer to enforce the prohibition law in the Territory of Alaska.

Mr. CHINDBLOM. He probably knew the ropes.

Mr. WICKERSHAM. He knows the ropes thoroughly.

I can not go over his testimony. It is in here. John testifies substantially this, that he heard somebody say somewhere that they voted for Wickersham, that they supported Wickersham, or some other little expression of that kind, and John looked for those men, and they had left the country apparently since the election. John comes in and testifies that they did not vote in their precinct, and that he knew how they voted, and that he had heard them say or had heard somebody else say how they had voted; in other words, to cast a cloud upon four or five more votes. There are not many of those votes, 10 altogether. But it only shows you what this fellow George Walker, John Moe, and Mr. Grigsby, and those others all added to gether were trying to do.

Mr. ROWAN. May I ask a question?

Mr. WICKERSHAM. Yes.

Mr. ROWAN. Is there anything in the record here that shows that this Moe was a keeper of a red light saloon in the red-light district? That is in the record, is it?

Mr. WICKERSHAM. Yes. I testified to it myself, because I had known of him for many years. I knew where his place was in the red-light district.

Mr. GRIGSBY. Did you issue the license to him?

Mr. WICKERSHAM. If there was any issued, I did, while I was there. I was there until 1907. He never had a license prior to that. I probably issued it to him. But I did it if at all under the United States law which required me to do it.

Now, I only want to call the committee's attention to one other thing in this matter, which is probably not very serious, but is this, that at the time we began to take testimony at Seattle on August 4, 1919, I discovered that we were going to have a good deal of trouble to get the depositions taken within proper time, and I call attention to this because of the fact that Mr. Grigsby has quite a lot of depositions here, which are not printed and which were held out of the record and not printed until recently. On August 4—and the time began to run on July 28, so that it was within a week—I wrote him a letter offering to waive the 40 days' time, and the 10 days' time, the whole 90 days within which to take depositions so that he could begin immediately to take depositions, and I could begin immediately to take depositions so that we could take all our depositions at the same time, and it would have given me time and enabled him to get his testimony here promptly and on time, but I was served with a pleading in this case, refusing to do that, very promptly, and when I reached Ketchikan or Juneau his attorney met me at the wharf with a formal proceeding.

I only mention that because it is officially in the record of the serving of the pleading. I mention it because we could have had plenty of time to take his depositions and gotten them here, but he declined to do so. As a matter of fact they could all have been here long ago anyway.

Now, Mr. Chairman, I am going to take up the fraudulent suppression of election at the Nushagak precinct. Nushagak and Choggiung precincts, the record shows very clearly, are adjoining precincts. They are in the Dillingham election district, the Dillingham recording district, out on Bristol Bay, way out to the westward. There are two precincts in that election district, Choggiung and Nushagak, and a man named French is the commissioner out there. French is a Democrat, a very bitter partisan against me, as the record shows, and was engaged very largely in getting votes against me, and taking a very great interest in the election two years ago; the record shows that the election almost turned on the Nushagak and the Choggiung precincts. If you will examine Judge Jennings' opinion rendered in this case two years ago, you will find that it turned very largely on Choggiung and Nushagak precincts, and he threw those two precincts out in the 1916 election because of some technical objection to the returns.

So this time the Democratic cohorts out there determines that they would not have any question about Choggiung and Nushagak. I had a big majority there. So French called the election in his district and posted notices, at least in the Croggiung precinct, the record shows, and appointed officers and held the election in the Choggoung precinct. In the meantime they had secured some additional forces in Choggiung, officials—all of the people there were nearly all officials. He was a commissioner, he was the Indian agent, he had charge of the Indian schools there, and he had a lot of nurses, teachers, and jail guards, and all that kind of thing around him, belonging to the official class. They were able in that way to control the Choggiung vote. They knew they could not control the Nushagak vote across the river and they did this: They divided the district—it was divided two years before—and they gave notices, but they did not send any records; he did not appoint any election officers, did not get the blanks sent on for the purpose of holding the election, and when the people met for election day there were not any officials there to call the election; so there was nothing that the voters could do; all the people in that precinct were disfranchised in that way.

The CHAIRMAN. Just one moment, Judge. Is there any way by which the electors there could have named their own election officers?

Mr. WICKERSHAM. No; I have got the statute in my brief. There is a clause in the United States election law providing that when the election is called and everything is done up to the time of the people coming together with the official documents on election morning, and then somebody is absent, they may elect some one in his place and go ahead. The law provides like this, section 8 of the act of May 7, 1906:

That in case any of the judges of election selected as herein provided for any precinct shall fail to appear and qualify at the time and place designated for the election for which they shall be appointed, then in that event the qualified voters present may, by a majority viva voce vote, select a suitable person or persons to fill the vacancy or vacancies in said election board; and the person or persons so selected shall qualify and serve on said election board with the same powers and in the same manner as if appointed as hereinbefore provided.

The CHAIRMAN. You think that would not apply if in the first instance the appointment had not been made?

Mr. WICKERSHAM. No; I would not. In the first instance the appointment must have been made by the commissioner, and that never was done. If there was a vacancy under those circumstances, then the paraphernalia, the official documents being there, something to justify the holding of the election, they could fill a vacancy. That is exactly what the law says.

There is no question about the facts in this case. On that day a man by the name of Nash, who was the school-teacher there at Choggiung, on election day voted at Choggiung. He had lived there for several years and was a man of family and of good character.

Mr. GRIGSBY. What was his business?

Mr. WICKERSHAM. School-teacher, the United States school-teacher at Choggiung, just across the river from Nushagak, 5 or 6 miles away, Nushagak being a little below on the opposite side of the river.

Mr. CHINDBLOM. What river?

Mr. WICKERSHAM. The Nushagak River.

Mr. Nash had lived there for several years, and knew everybody in the Territory. He had been the school-teacher there for all these years, a man of prominence. We found him in Seattle, and took his testimony, one of the first depositions. I took it in the early part of August. He testified very fully to all these matters, because he was there. He talked with French and the commissioner and he talked to all these people before election and on election day and subsequently. He stayed there until the next spring, and then we took his deposition after that. He testified very fully that there was no election held there; that there was no notice given; that the returns were not sent over, and testified very fully with respect to all those matters. There is absolutely no question about the facts concerning Nushagak.

The CHAIRMAN. I want to get one thing in my head a little more clearly. When and how are these precincts set aside.

Mr. WICKERSHAM. They are set aside by the judge of the district court in that division.

The CHAIRMAN. And when is that done?

Mr. WICKERSHAM. That is done whenever the judge desires to create a new recording district at any time.

The CHAIRMAN. And if a new one is not created, the old one remains just as it was established?

Mr. WICKERSHAM. Yes. The judge of the district court creates the recording district in his division, and this is one of the old recording districts of that division, and when election time comes around the commissioner in that recording district is the election officer, and he divides it into precincts and appoints all the election officers.

Mr. ROWAN. That is the Federal law?

Mr. WICKERSHAM. That is the Federal law. French was the man.

The CHAIRMAN. These two precincts referred to had been established long before this election?

Mr. WICKERSHAM. No; they were the two precincts we had the trouble over in 1916.

Mr. CHINDBLOM. They are the only precincts of the recording district?

Mr. WICKERSHAM. Yes; just across the river from each other.

Mr. ROWAN. It is the law that when the district has once been established it remains established until some subsequent act?

Mr. WICKERSHAM. Yes; the precincts and districts both. Districts remain permanent under the United States statutes unless for some good reason the commissioner changes them.

The CHAIRMAN. They are established originally by the judge?

Mr. WICKERSHAM. The voting precincts are established by the commissioner, but the recording district, where the commissioner has jurisdiction, is established by the judge.

Mr. HUDSPETH. There was one of the precincts that did not hold an election?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. And there were no returns?

Mr. WICKERSHAM. Yes; the 1918 election. I am trying to demonstrate to you, that the testimony in the case shows that French deliberately failed and refused to hold the election there, knowing very well that if it was held I would have a large majority.

Mr. HUDSPETH. I understand, but what cognizance could this committee take of that?

Mr. WICKERSHAM. It is a part of the first——

Mr. ROWAN. What would be the legal effect of that, assuming that we decided it was fraudulent?

Mr. WICKERSHAM. The legal effect in my judgment would be that everything that French did under his order has to go out.

Mr. ROWAN. Both districts?

Mr. WICKERSHAM. Both districts?

Mr. ROWAN. You would not say that it invalidated the entire election in the entire Territory?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. You mean in the entire district?

Mr. WICKERSHAM. In the entire district.

Mr. GRIGSBY. Mr. Rowan asked if it invalidated the election for the entire Territory.

Mr. WICKERSHAM. No; I do not mean that. I said district. I mean the recording district, the two precincts. Nash's deposition was taken, and it will be found from pages 76 to 81, in the record in this case, and if you look at the record on page 77, down at the bottom, he was asked [reading]:

Q. Was there an election held in the Nushagak district?—A. No, sir.

Q. Do you know whether Dr. French was over in the Nushagak precinct some time prior to the date of the election?—A. Yes, sir.

Q. Do you know whether he took the supplies over for the election on November 5, 1918, at the time he went over in October?—A. No, sir.

The CHAIRMAN. Let me get at your point.

Mr. WICKERSHAM. If you will let me get this first.

The CHAIRMAN. Where are you reading?

Mr. WICKERSHAM. Page 77. Toward the bottom [reading]:

Q. Do you know what became of those supplies; who did take them over?—A. Well, there was none.

Q. To whom were they delivered, do you know?—A. Just a minute; he was there after this boat. He made two trips in October, over to Nushagak.

Q. How late in October?—A. It was probably between the 18th and the 22d.

And the election was held on the 5th.

Now, at the very bottom of the page he says [reading]:

Q. Do you know whether at any of those times he took supplies over for the holding of the election on November 5?—A. No, sir; he did not.

Now, over on the next page, about the center [reading]:

Q. And there was no election held in Nushagak?—A. No, sir.

Now, over on the next page, about the center [reading]:

Q. And there was no election over there?—A. No, sir.

Remember, French is a Democrat.

On the next page, page 79, pretty close to the top [reading]:

Q. As a matter of fact it was his duty under the law to call the election, appoint election officers, and see that the supplies got there, because the supplies were all sent to him; is that correct?—A. Yes; I think so.

Q. And he didn't send them over?—A. No, sir.

And further down [reading]:

I was interrogated as to why this was not done—

Q. The people are of the opinion that you didn't send the papers over and hold that election, because he thought the biggest majority of the voters would be for me?—A. That is their public opinion about it.

Q. What is your judgment about it, from what you know?—A. To be frank with you—of course, a man swearing can not swear what a man will do, but—

Q. What is your best judgment?—A. I believe in my heart that that is the reason he did not send them over there.

Q. He had an opportunity to send them?—A. He had, twice, and there were people come over to the hospital from Nushagak, that lived in Nushagak, and he was there twice that I know.

Q. And he didn't provide for that election in that precinct?—A. No.

Q. And those people didn't get to vote at all.—A. No, sir.

Now, that is the situation. There is a certificate here also from the clerk of the court at Valdez, showing that no returns came from the Nushagak precinct; that he had sent all the election supplies. And Nash also goes on and testifies in his deposition here that there were more than 30 people residing in Nushagak precinct. As a matter of fact, it is one of the old precincts, has a large population there, and he gives the names of 28 or 30 people who resided there at that time, and none of them were permitted to vote.

Mr. CHINDBLOM. You mean 28 or 30 voters?

Mr. WICKERSHAM. Yes; voters who resided there at that time. Nushagak is the principal point in that whole territory.

Mr. ELLIOTT. You spoke something about the district. How many precincts are there in that district?

Mr. WICKERSHAM. Two, Nushagak and Choggiung, just across the river from each other.

Mr. ELLIOTT. Nushagak is the place where they did not get the ballot?

Mr. WICKERSHAM. They did not get anything.

Mr. ELLIOTT. And from the other place—

Mr. WICKERSHAM. They did.

Mr. ELLIOTT. What was the result.

Mr. WICKERSHAM. Mr. Sulzer had a majority in the other place, of course.

Mr. ELLIOTT. Do you remember how many votes were cast in that precinct?

Mr. WICKERSHAM. I have it right here. In 1916 there were 41 votes cast there.

Mr. CHINDBLOM. You mean in Nushagak?

Mr. WICKERSHAM. In the two precincts.

Mr. ELLIOTT. I am talking about the number cast in 1918 in the Choggiung precinct.

Mr. WICKERSHAM. In Choggiung? There were none in Nushagak, and in Choggiung there were 16 for Sulzer and 7 for me.

Mr. ELLIOTT. So that in this precinct thrown out it would take 9 votes from Sulzer's majority.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Your position with reference to this precinct where no votes were cast is that the other precinct should be thrown out by this committee?

Mr. WICKERSHAM. My position is that it is just as if these districts were counties, only they are all larger than the ordinary counties, and in the counties there were two voting precincts, and that in one of the precincts they did not call any election or provide for it, but in the other precinct they did.

Mr. O'CONNOR. Would they have a legal right to dispense with that precinct?

Mr. WICKERSHAM. Not at all.

Mr. O'CONNOR. They are obligated by the law?

Mr. WICKERSHAM. Obligated by the law to send those documents and everything there necessary to hold the election; oh, yes.

Mr. ROWAN. Now, give us the law with reference to throwing out the Choggiung district and the count there.

The CHAIRMAN. I want to hear that again. It is a new one to me.

Mr. CHINDBLOM. Suppose on the morning of the election in the Nushagak precinct the voters were assembled and found that there were no election officers, no ballots, no records, no means provided for holding the election, that they had gotten together and had sworn in election officers and had cast ballots, kept a record of the election, sent the judges' records in, would this committee have the right to consider the result of that election?

Mr. WICKERSHAM. As a matter of equity, but not as a matter of law. You would have the right in equity, because you could override everything, but strictly in accordance with the law you could not do it. There are a lot of authorities on that question. That is a gathering of the people, of course, but it is without authority. There is no authority of law for it.

I have in the record a certificate from the clerk of the court at Valdez that certifies "and I do further certify that no returns were received in this office from the Nushagak voting precinct, division, and territory."

Mr. CHINDBLOM. Is there any dispute about that?

Mr. WICKERSHAM. No; I think not.

Mr. GRIGSBY. There were no returns from there.

Mr. WICKERSHAM. There was no election held there, because this man was there.

Mr. GRIGSBY. He was not in Nushagak.

Mr. WICKERSHAM. He was across the river in sight of it.

The CHAIRMAN. We would be glad to hear you, Judge, on the law in the case with reference to throwing out the other precinct.

Mr. WICKERSHAM. McCrary on elections, at sections 169 and 170, lays down the general rule on this. McCrary says in section 168: "Votes must be cast in the manner provided by law," and then he goes on to give the authorities which substantially answers the question you asked a moment ago. He says [reading]:

According in *State v. Binder* it was held that in the absence of any evidence to the contrary it may be presumed that voters at an election were all legal voters of the city, and that those who did not see fit to vote acquiesced in the action of those who did vote, and consequently are equally bound and concluded by the result.

This doctrine, however, must be taken with some qualifications. If, for example, the election is held under such circumstances as to preclude the possibility that a majority of the persons entitled to vote could have had the opportunity to do so, it is void, although held at the time and place provided for law. It was accordingly held in a number of cases in the Southern States during the rebellion that where the larger part of the district at the time of the election was in the armed occupation of rebel forces, an election attempted to be held in the portion of the district not so occupied was void.

The true rule is this: If the opportunity to vote is given to all alike and if those who abstain from voting do so of their own fault and negligence, then those who do attend and vote have the right to decide the result; but in a case where those who fail to vote constitute a large proportion of the voting population, and where they did not have the opportunity to vote, there can be no valid election. * * *

Mr. CHINDBLOM. Is the author there speaking of the election unit, the voting unit?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. That would be the election precinct, would it not?

Mr. WICKERSHAM. That is the general rule.

Now, in Cooley's Constitutional Limitations, the general rule is laid down by Mr. Cooley at page 775, and I want to refer to that briefly. It is cited in my brief. He says:

That one entitled to vote shall not be deprived of the privilege by the action of the authorities is a fundamental principle. It has been held, on constitutional grounds, that a law creating a new county, but so framed as to leave a portion of its territory unorganized, so that the voters within such portion could not participate in the election of county officers, was inoperative and void.

Mr. GRIGSBY. That is a county officer.

Mr. WICKERSHAM (reading):

That one entitled to vote shall not be deprived of the privileges by the action of the authorities is a fundamental principle. It has been held, on constitutional grounds, that a law creating a new county, but so framed as to leave a portion of its territory unorganized, so that the voters within such portion could not participate in the election of county officers, was inoperative and void. So a law submitting to the voters of a county the question of removing the county seat is void, if there is no mode under the law by which a city within the county can participate in the election. And although the failure of one election precinct to hold an election, or to make a return of the votes cast, might not render the whole election a nullity, where the electors of that precinct were at liberty to vote had they so chosen, or where, having voted but failed to make return, it is not made to appear that the votes not returned would have changed the result.

I call special attention to this [reading]:

Yet if any action was required of the public authorities preliminary to the election, and that which was taken was not such as to give all the electors the opportunity to participate, and no mode was open to the electors by which the officers might be compelled to act, it would seem that such neglect, constituting, as it would, the disfranchisement of the excluded electors "pro hac" vice, must on general principles render the whole election nugatory; for that can not be called an election or the expression of the popular sentiment where a part only of the electors have been allowed to be heard, and the others, without being guilty of fraud or negligence, have been excluded.

That is undoubtedly the correct rule and is supported by wide range of authorities.

The CHAIRMAN. What section is that?

Mr. ROWAN. It is page 775.

Mr. WICKERSHAM. Page 775.

Mr. ROWAN. It is in the brief on page 51.

Mr. WICKERSHAM. Yes.

Now, Mr. Chairman, on page 781 he continues—and I want to cite him very fully, as it is important—[reading]:

So it is held that an exclusion of legal votes—not fraudulently but through error in judgment—will not defeat an election; notwithstanding the error in such a case is one in which there is no mode of correction, even by the aid of the courts, since it can not be shown with certainty afterwards how the excluded electors would have voted, and it would obviously be dangerous to receive and rely upon their subsequent statements as to their intentions, after it was ascertained precisely what effect their votes would have had on the result. If, however, the inspectors of election shall exclude legal voters, not because of honest error in judgment, but willfully and corruptly and to an extent that affects the result, or if by riots or otherwise legal voters are intimidated and prevented from voting, or from any other reasons the electors have not had opportunity for the

expression of their sentiments through the ballot box, the election should be set aside altogether as having failed in the purpose for which it was called. * * * And as we have already seen, a failure of an election in one precinct, or disorder or violence which prevent a return from that precinct, will not defeat the whole election, unless it appears that the votes which could not be returned in consequence of the violence would have changed the result.

Mr. ROWAN. In each of these cases, as I see them, it resulted in the whole election for that particular division being declared a nullity.

Mr. WICKERSHAM. Yes.

Mr. ROWAN. They were voting then for Delegates to Congress, and if this fraud was of sufficient importance to affect the result, as I read these authorities, it would not set aside merely the result for the one county, or in that one division, but it would set aside the result in the whole Territory.

Mr. WICKERSHAM. I think you are mistaken about that.

Mr. ROWAN. Show me where it says otherwise.

Mr. WICKERSHAM. I will show you. It must naturally mean that, because if it did not the man who perpetrates a fraud would get all the advantage of it. I could perpetrate a fraud and prevent the people from voting and thereby declare the whole election void, if I did that in one precinct.

Mr. ROWAN. That is what it says, "The election should be set aside altogether."

Mr. WICKERSHAM. It refers to the jurisdiction where the fraud was perpetrated.

Mr. CHINDBLOM. What is that jurisdiction?

Mr. WICKERSHAM. That is, in that county, in that precinct.

Mr. CHINDBLOM. In the case of a county election, I presume it would be, but what about other elections?

Mr. ELLIOTT. In this election were there other men being voted for?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. Only delegates to the legislature; or was there an election for attorney general at that time?

Mr. WICKERSHAM. No; there was not, but there were the members of the legislature.

I now call your attention to the case of *Marshall v. Kerns* (32 Tenn., 2 Swan, 68). This is from the opinion of the court [reading]:

It was proved by witnesses that the election was not held in the fourth civil district of said county. The officer appointed to hold it failed and neglected to attend at the place of voting. There were some 50 or 60 voters resident in that district, and some 20 of them attended on the day at the place of voting. The coroner had notice, before his return, that the election was not held in this district. It was a case of willful omission on the part of the deputy appointed to hold it, but we are not prepared to say that the neglect was for any fraudulent design to favor either of the candidates. * * * Now, the present election was not held in one of the civil districts. This was an injury to the people of that district, who were thus defrauded of the lawful right to vote in the election of their clerk. Nor can it be said that the election was legally held, as the law required it to be held in every civil district.

The people of an important division of the county being thus deprived of their privilege of voting, the officers' return is no reliable evidence that the person returned as elected was the choice of the people in the county. If the election had been held in this omitted district, the result might have been different. To hold the election valid would be of dangerous tendency; for, if one district may be omitted, more than one may be omitted, and the election be placed very much in the power of the officer. We do not think the motive of the officer material to the question. The injury to the public is the same, whether the omitted duty be the result of corrupt motives or of mere negligence. In either

case the public has been deprived of an important and highly valued right. We rest the case simply upon the ground that the election was not legally held, because not held in all the civil districts of the county. The people of the county are the appointing power; and the power not being legally exercised, not fully exercised, the plaintiff is not, in fact or in legal effect, appointed to the office. * * * And such fact appearing to the judge, he should deem it his duty to refuse to qualify and induct the pretender to the office.

Mr. CHINDBLOM. Was not that a county office?

Mr. WICKERSHAM. That is what I said.

Mr. CHINDBLOM. What was the judgment of the court in that case?

Mr. WICKERSHAM. The judgment—it was a contested-election case, and it was held that the election was void.

Mr. ROWAN. In the whole county?

Mr. WICKERSHAM. Yes.

Mr. ROWAN. For the county officer?

Mr. WICKERSHAM. I am applying it to these districts.

Mr. ROWAN. This was an election for Delegate from the Territory. This case which you have cited where there has been a fraud—this man or officer running for office in the political subdivision—or rather the election in that subdivision was declared void, not in the subdivision of the subdivision.

Mr. WICKERSHAM. My judgment about the matter is—I can not get a single authority, because Alaska is a case all by itself. The Territories do not have counties or any other conditions as around here; but the point I am trying to make in respect to these districts is that when an election is void or found fraudulent you throw out the district.

Mr. ROWAN. For a district officer?

Mr. WICKERSHAM. No; for every purpose; because the officer there has committed a fraud, he has permitted one precinct to vote because he and his friends could control it, and has deliberately prevented the other precinct from voting.

Mr. ROWAN. He committed a fraud on the whole Territory?

Mr. WICKERSHAM. Absolutely.

Mr. CHINDBLOM. Let me call attention to the facts in this case. The judgment rendered is as follows [reading]:

It is considered by the court that the plaintiff is not entitled to be inducted into said office and is not entitled to be qualified as clerk of this court, and that said election has been successfully contested by the defendant.

That portion of the judgment is in quotation marks. Then the report of the case goes on to say [reading]:

And, therefore, the defendant, who was in office, was permitted to renew his official bonds—

And so forth.

Elsewhere in the opinion it is stated that—

George W. Kerns, the incumbent in said office and late a candidate for reappointment in the election by the people, moved the court for leave to defend and resist the said motion, and it was granted him.

So that in that case the defendant, who had been the candidate for election, in the judgment of the court, was permitted to remain in office. In other words, he was inducted into office and gave new bonds and continued to serve.

Mr. HUDSPETH. He was the present incumbent?

Mr. CHINDBLOM. He was the present incumbent. I take it if he had been a new candidate that he would have been inducted into office just the same. The fact that he was the old incumbent, I think, made no difference.

Mr. WICKERSHAM. This same matter has been raised in Texas, and it has been raised there with respect to a number of elections, and the court, after going over the whole situation, concludes, at page 82 of the Twenty-third Texas Court of Appeals [reading] :

If officers whose duty it is to send out or deliver election writs can decline and refuse to do so as to one precinct, they could as well do so as to all but one, which they might know would vote their own sentiments and would thereby deprive an honest majority of the right to vote upon a matter of the gravest moment to their interests. * * * We are of opinion, on the facts exhibited in this record, that the vote for local option in Hunt County on the 11th of December, 1886, is for the reasons we have given above an absolute nullity; therefore the judgment in this case rendered by the court below is reversed and the prosecution dismissed.

Mr. HUDSPETH. That was a county election.

Mr. WICKERSHAM. Yes. Now, this other was a precinct election, but, as you see, it involved more than the vote of the precinct. It involved the election of delegate for the Territory of Alaska, but if you take that view, if you permit them to throw out the precincts in the election of delegate to Congress, you will be putting a premium on fraud that will enable the party that happens to be in power to control the elections. If you take that view, there will not be any Democrats elected any more.

Mr. ROWAN. I think this view, irrespective of politics, under the cases cited by you, where there is a decisive fraud in any political division, it makes the election in that political division a nullity.

Mr. WICKERSHAM. Then if a fraud of that kind shall cause an entire election to be declared a nullity, any citizen can come in and declare it a nullity.

Mr. ROWAN. I do not care how you appeal to the court for redress, as soon as you get within the jurisdiction of the court and the fact is shown that in any subdivision of a political division there is fraud in the election in that division, that election is a nullity, I do not care whether it is a Democrat or a Republican.

Mr. WICKERSHAM. Of course, if you take that view of it—let us assume that there was a fraud, that this man French refused to permit them to hold an election in the Nushagak district. I am a property owner and I am interested in defeating a man who has a big majority in the territory. All I have to do is to show that they did not hold an election in the Nushagak precinct and out goes the man who was elected. That is the end of that argument. If you assume that position, you have made that fraud the most powerful agent that is possible for every State in the Union. That is not the rule.

Mr. ROWAN. But that is the rule that Cooley gives.

Mr. WICKERSHAM. I know it is in one sense.

Mr. ROWAN. I would like to get away from it.

Mr. WICKERSHAM. I think that your good judgment and your sense of right would enable you to do it. You may have to lay down a new rule of honesty in elections to do it. If you do not, you will leave it wide open for any one of these commissioners in Alaska to make the elections all void.

Mr. ELLIOTT. As I understand this, one man had the control of only two precincts.

Mr. WICKERSHAM. That is all.

Mr. ELLIOTT. With other precincts in Alaska he had nothing to do?

Mr. WICKERSHAM. No.

Mr. ROWAN. He had control of the two precincts in that division?

Mr. WICKERSHAM. Yes. I think the rule is perfectly clear that when you can show that a man of that character is in the possession of the election machinery, and he purposely and deliberately defrauds the people in one precinct by refusing them an opportunity to vote, that it casts out the whole election.

Mr. O'CONNOR. Did this man ever assign any reason to the people of Alaska or the people in that district why he did not have an election?

Mr. WICKERSHAM. No.

The CHAIRMAN. Was he called as a witness?

Mr. WICKERSHAM. He was not in the Territory.

Mr. O'CONNOR. There should have been two voting places in these precincts, but there was but one?

Mr. WICKERSHAM. But one, and the big majority were in the other precinct, according to the testimony in the record.

Mr. O'CONNOR. In the precinct where the election was not held?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. And this official never gave any reasons for it?

Mr. WICKERSHAM. I could not find him, and I assume Mr. Grigsby could not, or did not.

Mr. ELLIOTT. Suppose this man had kept both of these precincts from holding an election. What effect would that have had on this matter under the law?

Mr. WICKERSHAM. Well, it would have been fraud, of course, upon the people of the division and upon the men who were candidates. I have not considered that very carefully. I have not attempted to get the authorities together.

Mr. O'CONNOR. Is he subject to prosecution as a criminal offender for not performing his duty?

Mr. WICKERSHAM. Undoubtedly.

Mr. O'CONNOR. Was he ever brought to trial?

Mr. WICKERSHAM. No; not at all.

Mr. O'CONNOR. No prosecution was ever instituted against him?

Mr. WICKERSHAM. Oh, no.

Mr. CHINDBLOM. Mr. Chairman, I want simply to make the observation with reference to the Tennessee case, *Marshall v. Kerns*, that it would be interesting to know—I think the opinion says nothing about it—whether under the statute of Tennessee the incumbent holds over in case of failure of election.

Mr. HUDSPETH. I think so. He holds his term of office until his successor is duly elected and qualified.

Mr. CHINDBLOM. Yes; but in this case he gave no bonds; he simply started a new term. But, I say, it would be interesting to know whether the opinion was based upon a statute. There is nothing in the opinion to show.

Mr. WICKERSHAM. In the case of *People v. Laine* (33 Calif. 55), cited on page 52 of my brief the court there held [reading]:

If a board of supervisors of a county neglect to divide a town or city into election districts and to appoint a board of registration in the same, in compliance with the registry act, and an election is held not in accordance with the provisions of said act, the election is void and confers no right upon the persons who claim to have been elected.

And there are a lot of other cases along these general lines.

There is also another case in Texas, on the same question, in *Thirty-third Texas Criminal Reports*, volume 94, which are not quoted in any way.

Now, from these authorities I have gathered the rule that when this man in that district refused to hold an election in compliance with the law of the district, the votes cast in that district were void.

The CHAIRMAN. Judge, have you examined the authorities with reference to the question of throwing out the precincts where fraud is shown in a contested-election case?

Mr. WICKERSHAM. Oh, yes; there are a lot of authorities on that, and they have been cited here later. In *Collins v. Teague* recently the Election Committee No. 2 threw out a large number of precincts for fraud.

The CHAIRMAN. Then, in that case where fraud was committed in the specific precinct or in a specific——

Mr. WICKERSHAM. Jurisdiction.

The CHAIRMAN (continuing). Precinct, that precinct alone was thrown out and the other votes were counted.

Mr. WICKERSHAM. They were in this instance; yes.

The CHAIRMAN. Was that in the *Teague* case?

Mr. WICKERSHAM. I do not have any recollection of that.

Mr. CHINDBLOM. Yes; in the *Teague* case certain precincts were thrown out and the results based on the remaining precincts.

The CHAIRMAN. Because of the fraud of the precincts that were thrown out?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. Does that line of authorities apply to the case that you are calling our attention to?

Mr. WICKERSHAM. I have those listed in the brief.

Mr. ROWAN. What page?

Mr. WICKERSHAM. I was trying to find it.

Mr. ROWAN. Do not stop now.

Mr. WICKERSHAM. I will refer to that later on.

The CHAIRMAN. As I understand it, the authorities hold in the cases that you have cited that in contested election cases where fraud is shown in specific precincts that those precincts have been thrown out and the other precincts counted.

Mr. WICKERSHAM. Yes; and the citations in the *Teague* case are very full on that question. I can not find them at the moment. I will a little bit later.

Now, in the Cache Creek precinct the record shows this: Cache Creek is a sort of temporary precinct. There were some mining claims in the precinct and every spring a large number of people go up to the mine and they go out in the fall; they were authorized to hold an election in Cache Creek precinct on election day. But

they had finished their mining and they wanted to go out, and on the morning of the election——

The CHAIRMAN. How do you mean that they were authorized? Was there a precinct established there?

Mr. WICKERSHAM. Everything was regular so far as I know, and there were enough voters there and all that kind of thing, 35 or 40 voters there; the precinct was regularly established and they were authorized to vote, and paraphernalia was received and the election officers were there ready for the election; but, on the day before, they concluded that they would leave the precinct because they were through with their work, and the record shows that in order to get away from the precinct they had to start very early in the morning. It was 30 or 40 miles across the mountain to any place where they could rest the next night, and so they got up at 4 o'clock in the morning, and had breakfast and went to vote. They had determined the night before that they would hold the election before they left. So they began about 4 or 5 o'clock to hold the election; they held it at the Foster cabin; they had a ballot box and the fellows there went in and voted, and by 5 in the morning or quarter after 5, all had left the precinct. They loaded up, and marched away with great caravans. We tried to find somebody at the office but everybody had left by 5 or a quarter after 5. We got all of them on the witness stand, and we have their testimony in this record.

Mr. CHINDBLOM. Were there any voters who might have voted that did not have any opportunity to vote because they had gone away before the time of closing the polls?

Mr. WICKERSHAM. I do not know. The records show that there were probably 4 or 5 left there.

Mr. HUDSPETH. What was the irregularity?

Mr. CHINDBLOM. They started voting at 4 or 5 o'clock in the morning.

Mr. WICKERSHAM. The law provides that the election board shall keep open at polling places from 8 o'clock antemeridian to 7 o'clock post meridian.

The CHAIRMAN. That is the Federal law?

Mr. WICKERSHAM. That is the Federal law which I read last night, section 9 of the Federal law.

Mr. ROWAN. You claim that that was violated in that way?

Mr. WICKERSHAM. Yes; there is no question about that at all. Now, you will find the evidence at page 282.

Wheelock was the first party put on the witness stand. Without going over Wheelock's testimony he admitted that they left very early in the morning, but he could not tell what time.

The CHAIRMAN. What does the record show was the vote in that precinct?

Mr. WICKERSHAM. Twenty-three for Sulzer and three for me.

Mr. HUDSPETH. Your contention is that at this particular box it was a void election because they did not comply with the law relative to opening the polls?

Mr. WICKERSHAM. Yes.

Mr. ROWAN. Not that there was any fraud or irregularity, but the mere fact that they did not open the polls at the time provided by law?

Mr. WICKERSHAM. Well, that is the fraud shown; yes.

Mr. ROWAN. And for that reason the votes should be thrown out?

Mr. HUDSPETH. In our State you have got to show irregularities, and if there is a fraud, it must be shown that somebody has been deprived of the right of voting.

Mr. WICKERSHAM. I do not know who was deprived of the right of voting.

Mr. HUDSPETH. We have to show that in our State, but I do not know what the law is there.

The CHAIRMAN. Does that apply in the case where the votes were cast at a time before that described by the statutes?

Mr. HUDSPETH. Yes; for instance, in our State the polls open at 7 o'clock in the morning and close at 7 o'clock at night. But they have been known to open them at daylight, the same as in your case. Contested elections have been based on that. But you have to show that somebody was deprived of his right to vote. They have been known to close at noon.

Mr. WICKERSHAM. Now, if you gentlemen will let me present this matter, I think it will obviate a great deal of difficulty. The first man whom we called was a man named Wheelock. Wheelock admitted that he voted very early, but he says all the time that he does not know what time. [Reading:]

Q. Do you know at what time the polls opened on that morning, Mr. Wheelock?—A. I do not.

Q. Did you vote?—A. I did.

Q. At what time of day did you vote?—A. That I can not say. I never noticed the time.

Q. What was the condition of the light at the time you voted?—A. Lamp-light.

Q. The lamps were lighted?—A. Yes, sir.

Q. Where was the voting done, Mr. Wheelock?—A. In the dining room of the company's camp.

Q. Is that where you voted?—A. No, sir; I voted at my place. They brought me the ballot box.

Q. From the place where the election was held?—A. Yes, sir.

Q. Were the lamps lit in your place, Mr. Wheelock?—A. Yes, sir.

Q. It was dark then, outside?—A. Yes; it was.

That is about all he testified. He could not remember the time, and we could not get a single one to remember the time. It was very early in the morning.

Now, Mrs. Wheelock did not vote and she was not so scary as Wheelock was. She went through the same thing about it being early in the morning, and all that kind of thing. [Reading:]

Q. How long after Mr. Wheelock voted did you leave?—A. Half an hour or more.

Q. Did you notice any lights when you left?—A. Yes; in Mr. Harris's place.

Q. Do you know whether the packing was done by lamp or day light?—A. I know that it was done by lamplight.

Q. Were there any lights used by the sleds at the time you started or afterwards?—A. I can not say.

Q. Did you have a clock in your place?—A. Only a watch. The clock was packed away. I can not tell you the moment we left.

Q. Did you hear anything about getting an early start in order to reach camp?—A. I heard about getting an early start, but nothing else.

Q. Were there any lights used by the sleds at the time they started or afterwards?—A. I can not say.

Q. Did you hear anything about setting a clock ahead?—A. No; I did not.

Q. How did it come that you did not vote?—A. I did not have the right to vote.

Q. Were you informed that you had no right to vote?—A. Yes, sir.

Q. Was there any effort made to get you to vote?—A. Only that a lady there, Mrs. Allison, said to me "If you do vote, vote for Mr. Sulzer if for anyone," but that made no difference to me, as Mr. Harris had informed me that I had no right to vote.

Q. Was it light enough when you left to see from one sled to the other, Mrs. Wheelock?—A. I can not say. I am positive that we left before 8 o'clock.

Then Harry Kingsberry came on, and it was just about the same thing; he could not say. We could not get any of these fellows to say. They all forgot.

Charles M'Groarty says [reading]:

Q. Did you leave that morning?—A. Yes.

Q. Where was the voting held?—A. In Jim Murray's cabin.

Q. Did you vote?—A. Yes, sir.

Q. After or before breakfast?—A. After breakfast.

Q. Do you know when you went to the polls?—A. No, sir.

Q. What time when you voted?—A. Can not say. I went to the polls and voted by lamplight.

Q. Did you notice the cook's time?—A. No, sir.

Charles Irvin was the cook, and they had some arrangement with Charlie about getting up early to get an early start, but Charlie did not look at the clock. They were fixed very well about looking at the clock. [Reading:]

Q. Do you remember any particular part of that morning when you did notice the time?—A. I certainly noticed at one part, because I get up by an alarm.

Q. For what time was it set?—A. It was usually set for 4.30.

Q. Do you know for what time it was set on that morning?—A. I am not sure.

Q. Do you remember it was moved ahead on that morning?—A. No.

Q. Is Mr. McDonald's statement correct in that respect?—A. I would not dispute it.

Now, he did not dispute Red, because Red is a Scotchman and red-headed, and he did not vote. So he could afford to tell the truth. He was not afraid of the situation.

Mr. ROWAN. What did he say?

Mr. WICKERSHAM (reading):

Q. State your name, age, and place of residence.—A. Malcolm McDonald, 42; Anchorage.

Q. Are you not commonly known as "Red" McDonald, by which name you were subpoenaed in this case?—A. Yes.

Q. Mr. McDonald, where were you in the early part of last November, 1918?—A. Cache Creek, working for the Cache Creek Dredging Co.

Q. What sort of operations were this company conducting?—A. Mining operations.

Q. Any other companies operating there at that time, in that vicinity?—A. Two or three, smaller.

Q. Was there an election held there early in November?—A. I believe that there was.

Q. On what date was that election held?—A. On the 5th of November, 1918.

Q. What was the condition of the camp with regard to closing down work and leaving?—A. Work was closed down and we had orders to leave. We were packing up to go out that morning.

Q. How many teams were leaving that morning with you, Mr. McDonald?—A. Five horses; single rigs.

Q. About how many men were going that way then, Mr. McDonald; do you remember?—A. As near as I can remember, there were 23 men.

Q. About how many men were employed by the Cache Creek Dredging Co. at that time?—A. Well, there must have been over 30 men, I guess.

Q. Do you know the number of votes that were cast at Cache Creek at that time?—A. No. I only heard.

Q. How many people were living there at that place in November?—A. You mean in the precinct?

Q. I mean there at Cache Creek where you were.—A. Only the people who worked there.

Q. How many others in the precinct, approximately, say?—A. Only two or three others, that I know of. Most of the people had left before that.

Q. Mr. McDonald, how early in the morning did you begin to pack up before leaving, as nearly as you can recollect?—A. At 4 o'clock I was out in the yard getting ready.

Q. Did you pack your sleds that morning?—A. Yes, sir.

Q. Did you have lights?—A. Yes.

Q. About what time did you have breakfast?—A. About 4 o'clock.

Q. Where was the election held?—A. In Jim Murray's cabin.

Q. Was Mr. Wheelock mistaken about its being held in the cook house?—A. Yes; I think he was.

Q. Where was Murray's cabin?—A. Right there close.

Q. Did you see any others vote, Mr. McDonald?—A. No, sir.

Q. I wish you would state the names of the persons who went out.

And then he gives a long list of names. [Reading:]

Q. Did you leave together; that is, those you have mentioned?—A. All except Wheelock. He might have been 15 or 20 minutes behind us; as nearly as I can remember, we all pulled out together.

Q. What was the condition of the light when you left?—A. It was dark. Still burning lamps, lanterns; in Wheelocks lights still burning.

Q. How far is it from the camp to the dredge?—A. About a mile.

Q. Do you remember anything about the condition of the light?—A. Yes; I recollect that it was not so dark; as we passed the dredge it was breaking daylight; still I could not see the head team. There were three or four teams ahead of me.

Q. Did you notice the time when you left camp, Mr. McDonald?—A. Well, no; I didn't just when we left; trying to get away—just didn't notice.

Q. Did you notice the time any time before it got light?—A. Not after breakfast.

Q. Did you notice the time then?—A. I noticed the time when I went to breakfast.

Q. What time was it?—A. Ten minutes after 4.

Q. How long after that did you leave; do you recollect?—A. Not more than an hour.

Q. What was your reason for leaving so early?—A. It was a long ways before we could camp.

Q. What distance was it to the camping place?—A. About 20 miles to timber. We had two women and their children and a sick man, so we had to get away early.

Q. Who was cooking there at the camp?—A. Charles Irvin.

Q. Did you have any talk about leaving early that morning?—A. Yes, sir.

Now, Charlie Irvin says he would not dispute what Red McDonald said about this thing. [Reading:]

Q. What was it?—A. I asked him if we could have breakfast earlier that morning so that we could get away. He said yes, any time. He said he had put the clock ahead. His time was different from mine.

Q. How much difference was there between your times?—A. About two hours.

Q. Was your time running with the cook's time before that?—A. Yes, sir.

Q. What is your opinion as to the time you left, that is by the time you had been using?

And then objection is made and finally he answered [reading]:

A. I think I can remember nearly. I am sure myself that it was not more than 5 o'clock. I do not think it was after 5 when we pulled out.

Q. What was the condition there in the early part of November when the day shift went to work?—A. I do not remember well enough to state. They had lanterns when they left—carried their lanterns along.

Then he says [reading]:

Q. Did you vote?—A. No, sir.

Q. For what reason?—A. There had been arguments about it and I thought it was illegal.

Q. With whom did you have arguments Mr. McDonald?—A. Mattocks.

Q. Before or after the election?—A. Before the election and after.

Q. On the morning of the election?—A. Before that; it had been talked over the night before.

Q. Were there any others present when you were having this talk?—A. I did not speak to any one but Harris. I said what are you going to do about this election?

Q. What did Harris say?—A. Harris said, "If they all want to vote we'll shove the clock ahead and make it time."

Q. Was Harris one of the judges of election?—A. I understand that he was. I was not in there when they voted—he was appointed one.

Q. Was he interested in the company, Cache Creek Co.?—A. I understand that he was a shareholder.

* * * * *

Cross-examination by Mr. PRICE:

Q. You thought you could vote on your first papers?—A. Yes, sir.

Q. Your statement that you left before 8 o'clock is an opinion?—A. No; I do not think it is an opinion. I know it.

Q. Your statement that you left at 5 o'clock—was that an opinion?—A. I did not say it was at 5 o'clock, but right close to 5. Right after breakfast I went out to get started about 10 minutes after 4.

Q. You judge the time to do your work would not be more than to 5?—A. Yes.

Whether they took the election returns with them or not, and ballot boxes, I don't know. The evidence doesn't show that, but they got it.

The CHAIRMAN. Who were the judges of election in that precinct?

Mr. WICKERSHAM. Mr. Grigsby has named them in his brief. Can you name them now?

Mr. GRIGSBY. No. Didn't any of them leave.

Mr. WICKERSHAM. You don't know that. That is not in the record.

Mr. GRIGSBY. You have got the names of those that left in the record.

Mr. WICKERSHAM. Part of them, but you don't know anything about it. You weren't there when their evidence was taken, and that isn't in the record.

Mr. HUDSPETH. Is there any evidence in the case that this election was held open after the time prescribed by law?

Mr. WICKERSHAM. No, sir.

I want to turn to a case that is directly in point, *Verney v. Justice*, 86 Kentucky, page 596. There the election was held along in the evening. The law prescribed that it should be held between certain specific hours, and when the hour to close in the evening came, by the vote then, one was elected, and when they held over an hour or two, they rushed over a lot of fellows and beat him. I will read you this decision, reading from page 601—it begins on page 596.

The whole decision I will attach at the end of my argument when I have finished. To-night I will just read portions of it.

We have a constitutional provision in Alaska which is just as nearly like this in Kentucky as you would expect two to be. Section 9 of the act of Congress of May 7, 1906, is part of the organic act—the constitution of Alaska. It declares that the election board

herein provided for shall keep the several polling places open for the reception of votes from 8 o'clock a. m. until 7 o'clock p. m. on the day of election. And it is substantially identical with the constitutional provision in Kentucky, and the court there held the election was illegal and void because not in compliance with the constitutional provisions.

The figures show there were 25 votes cast after that till 9 o'clock. So much of the election as was after the hours was illegal. In this case you can't tell. They cast the whole vote before they left that morning. The names were given in the record, and there were only two or three men left in the community, and they probably, as I understand from the record, voted with the other men before 5 o'clock that morning. So I say, under the rule in the Viney case the votes cast in that precinct were void and ought to be thrown out, those for me and for the other side, too.

Mr. HUDSPETH. I understand that your contention is that that voids the election in the entire district.

Mr. WICKERSHAM. The other precinct was voided by a man who had charge of the election. We are going to get to another case in a few minutes where the same rule applies.

The remedy in this case, the Cache Creek case, is stated in the following language [reading]:

Where the poll was opened the night before election, at a different place from the legal one, and a large number of illegal votes received, and the votes received the next day at the legal place were received in the same box unopened, the entire vote was rejected.

Well, that isn't exactly the point, but substantially so.

In McCrary on Elections, page 420, fourth edition, the rule is clearly stated in section 569, and is as follows:

The rule is thus stated in *Howard v. Cooper* (36th Cong.): When the result in any precinct has been shown to be so tainted with fraud that the truth can not be deductible therefrom, then it should never be permitted to form a part of the canvass. The precedents, as well as the evident requirements of truth, not only sanction, but call for the rejection of the entire poll when stamped with the characteristics here shown.

And then I cite other authorities. And now I have the Tague case, right here before me, at page 60, of this brief, and this is a quotation from it [reading]:

Early in the history of congressional contested-election cases, the doctrine was developed that where precincts or districts were so tainted with fraud and irregularity that a true count of the votes honestly cast was impossible, such precincts or districts must be rejected and the parties to the contest may prove aliunde and receive the benefit of the votes honestly cast for them.

As early as the Fourteenth Congress (1815-1817), in the case of *Easton v. Scott* (Rowell's Digest, 68), the committee unanimously recommended that the alleged return from the precinct of Cote Sans Dessein be rejected, and submitted resolutions declaring petitioner entitled to the seat. This report was recommended to the committee, with instructions to receive evidence that persons voting for their candidate were not entitled to vote on the election. Apparently the recommendation of the committee to reject the vote of the precinct was not questioned. The doctrine thus laid down by the Elections Committee in the Fourteenth Congress has been followed in an overwhelming number of cases, the most recent being, etc.

I take the position in this Cache Creek case that all of that vote should be thrown out; all voted three hours before the precinct opened, and they had packed their grips and left the community and they were

probably 15 miles away from the polling place at the time the law provided that they might meet and cast their ballots. The whole thing is illegal and void.

Now, the fraudulent suppression in the Forty Mile precinct begins at page 61 of my brief. These matters were charged very fully in my notice of contest; notice was given to counsel on other side very fully, and the evidence was taken also very fully. Without going particularly into the situation, this is what happened: In the Forty Mile recording district there were five voting precincts. The evidence shows very fully and very clearly that the principal places in the Forty Mile district were the town of Forty Mile and the town of Steel Creek. There were two towns in the recording district.

Mr. CHINDBLOM. Incorporated towns?

Mr. WICKERSHAM. No; just mining camps; they had been there for 30 or 40 years; old places. But just about the time of the election the commissioner had received instructions from the judge over at Fairbanks, or rather from the clerk of the court. He received a letter from the clerk of the court giving him some instructions to do away with some of the precincts there, and evidently there were some other instructions which we didn't get hold of, because this is what he did.

About 31 or 32 days before the election he changed the situation there on the 1st of October, 1918. He made a new order in his district, abolishing two precincts. He abolished the Steel precinct and the Jack Wade precinct and added their territory to two other precincts: For the Jack Wade precinct he established a polling place at Moose Creek, a place 15 or 20 miles away from Jack Wade, away back in the woods, in the mountains, at a cabin where there were two men who lived there. At the other place he sent them 18 to 20 miles to a small place where there were a few people, and thus he added a greater population at these two places, and fixed their voting places away from them 18 or 20 miles, where they couldn't get to them. It was done deliberately and fraudulently, and at the instance of Judge Bunnell, who testified here, that that instruction was submitted to him. Under the law it should have been done 60 days before the election, and it was done on the 1st day of October. You will find this on page 61.

The authority and duty of the commissioner in providing voting precincts in his election district is thus defined and pointed out in section 5, act of Congress of May 7, 1906 (34 Stat. L. 169 (171)), as follows [reading]:

SEC. 5. That all of the territory in each recording district now existing or hereafter created situate outside of an incorporated town shall, for the purpose of this act, constitute one election district; that in each year in which a Delegate is to be elected the commissioner in each of said election districts shall, at least 30 days before the date of said first election, and at least 60 days before the date of each subsequent election, issue an order and notice, signed by him and entered in his records in a book to be kept by him for that purpose, in which said order and notice he shall—

First. Divide his election district into such number of voting precincts as may in his judgment be necessary or convenient, defining the boundaries of each precinct by natural objects and permanent monuments or landmarks, as far as practicable, and in such manner that the boundaries of each can be readily determined and become generally known from such description, specifying a polling place in each of said precincts, and give to each voting precinct an appropriate name by which the same shall thereafter be designated: *Provided, however.* That no such voting precinct shall be established with less than 30

qualified voters resident therein; that the precinct established as aforesaid shall remain as permanent precincts for all subsequent elections, unless discontinued or changed by order of the commissioner of that district.

Second. Give notice of said election, specifying in said notice, among other things, the date of each election, the boundary of the voting precincts as established, the location of the polling place in the precinct, and the hours between which said polling places will be open. Said order and notice shall be given publicity by said commissioner by posting copies of the same at least 20 days before the date of said first election, and at least 30 days before the date of each subsequent election.

I have just quoted the law on page 61. I want to call it to your attention, because it violates every part of the statute, in the action of this particular "Order and notice of election to be held on Tuesday, November 5, 1918." [Reading:]

In the office of the United States commissioner at Franklin, Alaska, fourth judicial division, in the matter of the election of a Delegate to the House of Representatives from the Territory of Alaska, one member of the senate of the Territory of Alaska, four members of the house of representatives of the Territory of Alaska, one road commissioner for road district No. 4.

In pursuance of an act of Congress approved May 7, 1906, entitled "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," I, John J. Donovan, United States commissioner in and for the Forty Mile precinct, fourth division, Territory of Alaska, do hereby order that said recording district be, and the same is hereby divided into the following voting precincts, the boundaries thereof defined, a polling place specified and a notice of said election published; fixing the date of said election, and designating the said polling places as follows, and the hours between which said polling places will be open;

1. Moose Creek precinct: It is ordered that the boundaries of said precinct shall be as follows: Commencing on the Fortymile River, at the international boundary line; thence running upstream to the mouth of O'Brien Creek, including all tributaries flowing into the said Fortymile River and Walkers Fork, and all its tributaries from the mouth of Cherry Creek upstream to the international boundary line.

2. Franklin voting precinct: It is ordered that the boundaries of said precinct shall be as follows: Commencing on the Fortymile River at the mouth of O'Brien Creek; thence running upstream and including all tributaries of the North Fork within the boundaries of the Fortymile precinct and all tributaries of the South Fork upstream to the mouth of Walkers Fork; thence in an easterly direction to the mouth of Cherry Creek, on said Walkers Fork, and all its tributaries flowing into Walkers Fork.

3. Chicken voting precinct: It is ordered that the boundaries of said precinct shall be as follows: Commencing at the mouth of Walkers Fork, on the South Fork of the Fortymile River; thence in a southerly direction, including Denison Fork and all its tributaries, Mosquito Fork and all its tributaries, and the Tanana Basin within the boundaries of the Fortymile precinct.

4. That the several polling places herein designated will be open for the reception of votes from 8 o'clock until 7 o'clock on the day of said election, to wit, the 5th day of November, 1918.

Dated this the 1st day of October, 1918.

JOHN J. DONOVAN,
United States Commissioner in and for the Fortymile Precinct.
Territory of Alaska.

Now, you will notice that he doesn't name any polling place in any one of those precincts. He doesn't tell the voters where the voting is to be held in any one of those precincts, not at all. All these people in the town had no notice of where they were to go to vote. They didn't have any notice of where this cabin was away back in the woods, and there was no notice that there was going to be any voting there, and the place fixed by the law was divided into three different places. The law is this way. Under the United States statute, to change the district or the precinct he had to do it at least

60 days before the election. He did not do it until the 1st day of October, and the election was held on the 5th day of November, 35 days after. That is void for that precinct.

Under the statute those precincts are made permanent. He didn't change it 60 days before the election, so that 60 days before the election his jurisdiction failed him. He had no right to touch those precincts after that date. They were permanent precincts on that day and those people had a right to have them left just as they were because he must do it before the 60 days expires, and he had no jurisdiction. But he did it on the thirty-fifth day, and he utterly disrupted the voting at those precincts, with the result that 30 or 40 people who voted at Steel, had nowhere to go, and didn't know where to go in the first place, and if they did know, it was a two-days' trip away back out to this cabin in the mountains, because it was in November, and a trip of that kind for men and women would make it a two-day trip, 30 or 40 of them didn't go at all. They could not go.

Mr. ROWAN. What remedy do you say must be applied there?

Mr. WICKERSHAM. Throw out the whole precinct or else do this: On page 65, you will find a synopsis of the depositions of the persons whom we could find to take, not all of them were taken; but, these were taken that we could get hold of. Take, for instance, Hunt, at the top of that list. He lived at Wade precinct, and he said it was a 32-mile round trip to where he would have to go to vote, but if he could have gotten over there he would have voted for me. Then, you take the next man, Patterson. He said he would have voted for the other man. He lived 32 miles distant. Some of them would have voted for me and they have lived there 8 or 10 years. These men were called without regard to their politics. They were all so outraged in that country because of the frauds perpetrated on them. They had been wholly disfranchised and they came in there and protested against it. They sent a protest to Judge Bunnell. He violated the law. The judge violated the law in the first place in sending any such notice as that, and in sending any such instructions. If you will read the instructions here, you will see how peculiar they are.

Mr. O'CONNOR. How many votes were returned in all the precincts?

Mr. WICKERSHAM. Not many: because so many of them were disqualified by that.

Mr. ROWAN. Was the name of that recording district the Forty Mile District?

Mr. WICKERSHAM. Recording district. Some 16 or 17 men testified they would have voted for me if they had been permitted to vote. Some of them would have voted for Sulzer.

The CHAIRMAN. How large were these precincts where the voting places were changed?

Mr. WICKERSHAM. Two of the oldest ones in Alaska.

The CHAIRMAN. What were they?

Mr. WICKERSHAM. Jack Wade and Steel Creek.

The CHAIRMAN. How many votes do the record show were in each of those precincts?

Mr. WICKERSHAM. I have just read it to you.

The CHAIRMAN. About how many, I mean, in those that were discontinued, the two precincts you refer to.

Mr. WICKERSHAM. There were 21 witnesses we had who testified, but there were a good many we couldn't catch. I don't know how many there were there. It is impossible to tell. Now, we have got the testimony of a lot of these witnesses here.

Mr. CHINDBLOM. Were you counting the names on page 65 of your brief?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. That is 20.

Mr. WICKERSHAM. Twenty instead of twenty-one.

Mr. ROWAN. I think you have gone over that pretty thoroughly. Is there any other part you want to go over?

Mr. WICKERSHAM. Except to call the attention of the committee to the testimony of the witnesses. Democrats and Republicans, you have a synopsis of it and I think the same rule ought to be applied in that as ought to be applied in the 40-mile district, that the whole district ought to be thrown out because the frauds were perpetrated by the election officer in the district.

Mr. O'CONNOR. Wouldn't the real reason be in those precincts because the election was not held in accordance with the law.

Mr. WICKERSHAM. They were not. They were held in strict violation of the law.

The CHAIRMAN. Were the voting precincts in the three places in the original voting precincts before the change was made which you claim was in violation of the law?

Mr. WICKERSHAM. The voting places, two of them, at Chicken and Franklin, but probably not at Moose Creek; that is a new scheme.

The CHAIRMAN. But the other two of the three precincts where the votes were cast——

Mr. WICKERSHAM. They were the old precincts, but the boundaries had been changed by this order of October 1.

The CHAIRMAN. But the voting places were identical with the old voting places in the old precincts?

Mr. WICKERSHAM. I understand in two of them; yes.

The CHAIRMAN. What about the third?

Mr. WICKERSHAM. In Chicken and Franklin.

The CHAIRMAN. How about the other one?

Mr. WICKERSHAM. Moose, I understand, was not. That was a new place, put away back in the woods.

The CHAIRMAN. That had been entirely changed?

Mr. WICKERSHAM. As I understand it, although Moose had been a voting place in 1916, but the polling place had been changed without any notice in the order so that the people had no notice of it. You will allow me those votes, if you want to give me the vote of these people who say they would have voted for me if they had been able to get there—or you can throw the whole precinct out.

The CHAIRMAN. Your contention is that under the rule and under the law we should throw out all the votes cast there.

Mr. WICKERSHAM. Yes, sir; I think that is the law. That is my view of the law. Of course, I would rather have the other view adopted. I would rather you would allow me these votes, the returns as they are, and allow me these votes, but my judgment is the

rule of the law is the other way. But if I was on the jury I don't believe I would give any premium to frauds of that kind.

We have arrived now at a new matter—the frauds of a large number of nonresident soldiers in Alaska. And just at this point I want to call the attention of the committee to the report of the committee in the other Congress that had this very matter before them and decided the situation, because in the contested-election case two years ago that was the fundamental point in the case.

Mr. O'CONNOR. Are copies of that report available?

Mr. WICKERSHAM. I have one. I don't know whether there are others or not. I am going to read to you from Judge Wilson's report in the contested-election case of Wickersham against Sulzer in September 4, 1918, and ordered to be reported. There was no minority report; it was unanimous.

Report 837, Sixty-fifth Congress, third session. I am only going to read so much of it as relates to the matter of the soldier vote.

Mr. ROWAN. Was it at the same place and with regard to the same units?

Mr. WICKERSHAM. No; but with regard to some of them; some of them the same names, and a good many of them were not. The truth is that out of the 36 soldiers that voted at the election of 1916, and which was held to be invalid and void, all of them had left the Territory of Alaska under orders of their superior officers, and only one of them remained there, and he was still in the Army.

But there was a protest and objection and effort made to get the testimony of a large number of these Signal Corps men in the 1916 election, but they refused to testify, being instructed by their officer not to testify, and they are the same men whom we objected to in 1918 again, so that the matter overlaps in that way. But I want to specifically call the attention of the committee that all of the men who took the oath at Fort Gibbon on November 5, 1918, they were in the United States Army, but they took the citizens' oath, that they were citizens of the Territory of Alaska, and, as a matter of fact, they were only soldiers and there only temporarily. They all committed perjury. I want to read so much of this opinion as refers to this particular matter. Not all of it, but just portions of it. [Reading:]

Each and all of the men whose votes are in question here came to Alaska as soldiers in the United States Army. They remained in such service from the respective dates of their arrival in Alaska up to and until November 7, 1916, the date of this election, and were there in such service on that date. All were enlisted and accepted for service in the States and, as indicated by the official records, the number of men and date of enlistment being as follows:

"One in 1916, 5 in 1915, 20 in 1914, 4 in 1913, 4 in 1912, 1 in 1911, 1 in —, of whom there were 10 from Missouri, 8 from California, 1 from Kansas, 1 from North Dakota, 4 from Washington, 3 from Ohio, 4 from Colorado, 2 from Texas, 1 from Louisiana, 1 from Minnesota, 1 from New York."

Seven were honorably discharged and reenlisted in Alaska on the following day.

Each and all of them had been in the Territory more than a year immediately preceding the date of election and at Eagle or Fort Gibbon more than 30 days immediately preceding election day.

If they had acquired a legal domicile in Alaska they were entitled to vote and the votes should be counted; otherwise, not.

To become a citizen and a qualified elector in Alaska a bona fide residence of one year in the Territory and 30 days in the voting precinct is required.

Here is a certificate made by the War Department and verified by Col. Lenoir, in charge of these soldiers in Alaska, stating their

names, places of enlistment, their regiment, number, and term of their enlistment.

Mr. HUDSPETH. I take it under your law a soldier is ineligible to vote?

Mr. WICKERSHAM. He is.

Mr. HUDSPETH. Then I take it there can be no issue in this contest of the right of a soldier to vote?

Mr. WICKERSHAM. No; it is a question of residence.

Mr. HUDSPETH. Then I understand if a soldier is actually a resident of Alaska, notwithstanding the fact that he is in the military service, he can vote?

Mr. WICKERSHAM. If he is in his precinct.

Mr. CHINDBLOM. In other words, a resident of Juneau who has lived there for a year prior to the election and in the voting precinct 30 days prior to the election would be barred from voting by the fact that two days or a month before the election he enlisted?

Mr. WICKERSHAM. No; provided he voted. We haven't got any particular law, but I think that is the general rule.

The CHAIRMAN. Is that the rule as I understand it as laid down by the committee in the last Congress and which was adopted by the House?

Mr. WICKERSHAM. Well, I think it is. They don't say that in that many words. They just excluded these soldiers because they had not done these things, but they did not say if they had lived there they might have voted.

The CHAIRMAN. They excluded them because their residence was during their service?

Mr. WICKERSHAM. Yes, sir.

Mr. CHINDBLOM. Here is what they say according to your own quotation, on page 15 of the report of the committee of the Sixty-fifth Congress:

If they had acquired legal domicile they were entitled to vote and the votes should be counted, otherwise not.

Mr. WICKERSHAM. That is the law.

Mr. ELLIOTT. How could a soldier acquire it?

Mr. WICKERSHAM. He couldn't acquire it as long as he is a soldier. And if for instance he enlisted in your county in Indiana in the Army of the United States, under the laws of the United States his residence is reserved to him in your district as long as he is in the Army, and if he comes back to your district, to his original home, when he is discharged, that is his home.

Mr. ROWAN. Assuming one of these men went to Alaska and while there married and started a family——

Mr. WICKERSHAM. They do that frequently.

Mr. ROWAN. Would you consider under those circumstances that he couldn't elect to desert the residence of his enlistment and establish a new residence in Alaska?

Mr. WICKERSHAM. I will say this, that there is no evidence that any one of them did that, except two. There are two of them that claim to have done that, a man, one Tegues, and a man, one Noaks. But all of these men in 1916 left there and were in the Army and all of those who have been discharged since 1918 have left the Territory except Tegues and Noaks. They are still in the Army.

Now, reading from page 17 of this report, he quotes from McCrary on Elections, page 70, sections 90 and 91 [reading]:

SEC. 90. The fact that an elector is a soldier in the Army of the United States does not disqualify him from voting at his place of residence; but he can not acquire a residence, so as to qualify him as a voter, by being stationed at a military post while in the service of the United States.

SEC. 91. Soldiers in the United States can not acquire a residence by being long quartered in a particular place; and though, upon being discharged from the service they remain in the place where they had previously been quartered, if a year's residence in that place is required as a qualification for voting, they must remain there one year from the date of discharge before acquiring the right to vote.

Mr. O'CONNOR. What was the result of that contest, Judge?

Mr. WICKERSHAM. I was seated.

Mr. O'CONNOR. The committee recommended it?

Mr. WICKERSHAM. Unanimously.

Upon the question of the soldiers' vote he referred to Hines' Precedents and to *Taylor v. Reading*, a case cited from the Forty-first Congress, and also the report of the Judiciary Committee of the Senate in the case of Adelbert Ames, Senator from Mississippi, cited in the Compilation of Senate Election cases, 375.

On the next page Judge Wilson, in his opinion, says [reading]:

Applying this law to the facts here, the 36 soldiers stationed in Alaska who voted at Eagle and Fort Gibbon were without legal domicile there and were not in any legal sense inhabitants of the Territory, and therefore were not qualified electors therein.

It is contended, however, that these soldiers had changed their residence from the States where they enlisted to Alaska and had acquired domicile there. The evidence in support of this is that they appeared on election day, and upon their votes being challenged, took the required oath containing the declaration of residence and voted.

And further on—

Now, in keeping with what was apparently the view held by some of these officials, in the argument for the contestee, the contention is made that the residence or domicile of a soldier is determined by his intention; that (quoting from brief) "these soldiers have already shown their purpose and have established their residence in Alaska."

This argument seems to be based upon the assumption that the soldier or officer in the military service sent under orders away from the State of his original domicile and stationed in another State, while subject to the orders of his superiors, can have and exercise voluntarily and in his own right the requisite intention necessary to effect a change in domicile, and that, after being so stationed for the statutory period required for voting, a declaration of choice of domicile accompanied by the act of voting constitutes sufficient evidence that the change has been effected.

Without stopping to discuss the public policy of approving here and establishing a rule of this kind, it is sufficient to say that the law and authorities are in practical harmony and are all the other way.

Mr. CHINDBLOM. I suppose the underlying theory is that a soldier comes under orders, is not exercising his intention in selecting his domicile, and that it can not be his intention, but the intention of somebody else, with respect to choosing his place of residence. In Illinois a soldier can vote. He can send his vote in by mail. He doesn't even have to register as other citizens are required to register. He can mail an affidavit, so that he doesn't have to come and register.

Mr. WICKERSHAM. This question arose in a case from Mississippi, just after the war. The report of the Committee on the Judiciary in

the case of Mr. Ames, Senator from Mississippi, was cited here. I will read from that [reading]:

His original domicile was in Maine. After his graduation from West Point, about 1860, he remained in the military service of the United States. In 1868 he was ordered to Mississippi and in the same year became provisional governor by appointment by Gen. McDowell, then district commander, and he himself was, in 1869, promoted to the office of district commander by assignment of the President of the United States, and while in Mississippi holding this office he was elected by the legislature of that State to the United States Senate January 18, 1870.

The question of his eligibility for admission to the Senate arose under the provisions of the Constitution of the United States requiring that "no person shall be a Senator * * * who shall not, when elected, be an inhabitant of the State from which he shall be chosen."

The Judiciary Committee of the Senate reported that Gen. Ames was not, when elected to the Senate, an inhabitant of Mississippi within the intent and meaning of the Constitution.

And then Judge Wilson quotes a lot of authorities on the definition of what an inhabitant is and what a resident is and one who dwells or resides permanently in a place, one's own home. Webster gives the following definition: "One who inhabits or has an actual fixed residence." He went on and gave a lot of definitions of what a resident and an inhabitant is.

Mr. CHINDBLOM. Was this man Ames in the United States Senate?

Mr. WICKERSHAM. Yes, sir; of course, you all know that the Senate was Republican then, and Gen. Ames was a Republican, and everything was Republican, and these people were deciding against a Republican. They unanimously decided that Gen. Ames was not a resident of the State of Mississippi. He was not a resident there; he was a soldier there.

During all the time of his residence there it was as a soldier and he had no right of residence there, and they turned him down on that, and on the basis of those provisions Judge Wilson held that these soldiers in Alaska in the 1916 election were not entitled to vote, and threw them out.

Mr. ROWAN. How would they affect your election?

Mr. WICKERSHAM. If those soldier votes were thrown out I would have been elected.

Mr. ROWAN. Does the evidence show how they voted?

Mr. WICKERSHAM. Nearly all.

Mr. ROWAN. Now discuss, if you will, in particular how it was ascertained how those men voted for Sulzer.

Mr. WICKERSHAM. You begin on page 81, and you will find the data. Now, before we did anything else——

The CHAIRMAN. Can you give offhand, without taking any time, the precincts at which these soldiers voted, the number at each precinct?

Mr. WICKERSHAM. The largest number of them voted in the Valdez precinct. I think 18 or 20 voted there. Four of them voted at Fairbanks, six or seven voted at Fort Gibbon, and about six, I think, at Nulato.

The CHAIRMAN. How many votes at Fort Gibbon?

Mr. WICKERSHAM. About six I think. It is in the record. The first thing I did in this matter was to get this record from the War Department on page 80, and you have the original in the record.

That shows the original location of these soldiers, about 40 of them. That shows the names of 40, the date of their original enlistment, the places of their original enlistment and their places of residence; in addition to that there were three or four who voted whose names we did not know of at that time, and who came in subsequently, so that makes about 43; then there was a vote cast at the Valdez Bay precinct of something like 23, five or six soldiers who were in the Regular Army, but who were draftees from Alaska, but were not in their own precincts. Some of them were draftees from Alaska, so they were not Regular soldiers.

The CHAIRMAN. How many do you claim voted outside of the precinct? As I understand you there were about 44 who voted who enlisted outside of Alaska, whose residence was outside of Alaska.

Mr. WICKERSHAM. More of that, because some of these soldiers at Valdez Bay were Regulars.

The CHAIRMAN. And a number you say who were drafted in Alaska?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. Where did they reside?

Mr. WICKERSHAM. Not one of them voted in the precinct where they were residents.

Mr. O'CONNOR. Is there any difference between a Regular and a drafted man?

Mr. WICKERSHAM. Not a bit.

Mr. O'CONNOR. Then the aggregate is something over 60 or 70 votes?

Mr. WICKERSHAM. About 75 I think. You will find on page 102 a list of the soldiers voting there. There were 31 illegal soldier votes cast in the Valdez Bay precinct and 43 or 44 in the rest of the territory, making about 75 altogether.

The CHAIRMAN. Did you establish how the soldiers voted at Valdez precinct?

Mr. WICKERSHAM. Yes, we did; either in their statement or by the process of exclusion. Twenty-three of them voted for Sulzer, seven voted for me, and one voted for Connolly in the Valdez Bay precinct.

Mr. CHINDBLOM. How did you arrive at that?

Mr. WICKERSHAM. By finding the total number of votes cast and putting those men on the stand who were legal voters and having them testify how they voted.

The CHAIRMAN. Did all the voters outside of the ones in the service testify in the case as to how they voted?

Mr. WICKERSHAM. No; but this is the way they did it: There were so many votes cast in the Valdez Bay precinct. We discovered how many were legal. We put those legal voters on the stand, some of them for me and some of them for Mr. Sulzer, and we subtracted those who voted for me from my vote, and those who voted for Sulzer from the balance, and that gave us the result.

The CHAIRMAN. Did you call as witnesses all the citizens who voted in that precinct who were not soldiers?

Mr. WICKERSHAM. Yes; we called those, all of them.

The CHAIRMAN. And you have their testimony, all of them, as to how they voted?

Mr. WICKERSHAM. Yes, sir; and as many as voted for me we took away from the total vote cast for me, that left the soldier vote—and so many as voted for Mr. Sulzer, the number who voted for him; that left the soldier vote for him. So that we got that matter mathematically correct.

Mr. Chairman, I don't think it is necessary to go through this record with respect to the soldier vote. We called as many of these people as we could. We got as much of this testimony as we could. I went there in May and undertook to get their testimony. The record shows I sent each one of these men a letter asking them to come voluntarily up and make a statement as to how they voted. They refused to do that. Then I had a subpoena issued from a notary public and subpoenaed all of them to appear before him and give their testimony.

I read you last night their refusal to do that. They came there with Mr. Dimond, who is Mr. Grigsby's agent, his attorney, after he got into this case, and Mr. Dimond objected and put every obstacle in the way. The men themselves would have testified but for Dimond. The first man we called refused to testify. Dimond instructed him not to answer. Then I went over the list. They were all there and they wouldn't testify. And then I came back here and got that resolution through and started in to get their depositions under that resolution. When I got out to Seattle I found that Col. Lenoir, in charge of the soldiers, had not received any notice to have them there. I demanded of him that he get some authority to summon them. He didn't do it. When I got up to Valdez later on I undertook there to get authority. I telegraphed him very extensively. You will find my telegrams in the record, where I sent a large number of telegrams to Col. Lenoir—not to the War Department, but to Col. Lenoir, because he had charge of these men in Alaska—trying to get these depositions taken. It was impossible to get even an answer, until the thirty-third day after that resolution till we got any notice there at all.

In the meantime I had tried to subpoena these men; had subpoenaed some of them, and the situation in Alaska under Mr. Dimond was so bad that I was beaten up. He wouldn't let people testify. Mrs. Tyer was a good woman and would have testified if he would have let her; but he stood there all the time giving her advice that she didn't have to testify; we couldn't make them do anything. Mr. Grigsby had told them that, and we found those people when we got out there in possession of these statements. We proceeded in the matter of taking those depositions until the thirty-third day. After I had given notice of taking depositions further north, then I was in the hospital; they had beaten me up. Two or three of these men waylaid me and beat me up, and my eyes and head and ears were hurt. I don't blame them half as much as I do Dimond. He is the mayor of Valdez, and he was the man who posted these men who waylaid me just as I walked up, while he walked away. I am blind as a bat, except I can see a little out of my left eye. I am not a strong man and it was no trouble for them to beat me up. I was in the hospital nearly a week.

In the meantime, just as I got ready to leave there, the officer who was in charge of the post there came to me and gave me a letter. I

want to call your attention to that letter. It is in the record. It is in the brief. Here it is at page 78 in the brief. On the thirty-third day, on August 30. I might say this resolution passed here July 28, passed here and became effective immediately. It didn't give me one minute's time to get to Alaska. The minute that resolution passed the House, my time began to run; here I was in Washington, so I had to take my papers and hurry back to Alaska and get to him with the papers before he had any jurisdiction. Those fellows up there made objections because they had no papers to show. Before I could get to Nome almost 40 days had expired; before I could get to Juneau, almost 30 days had expired, and before I got there the military officers served me with this notice. I will read the notice. [Reading]:

[War Department, Signal Corps, United States Army, Office of Officer in Charge, First Section, Washington-Alaska Military Cable and Telephone System.]

VALDEZ, ALASKA, August 30, 1919.

From: Officer in charge.

Subject: Election contest.

1. The office has received orders in assemble certain men at Valdez, Alaska, by September 6, 1919, for the purpose of giving testimony in the Alaska election contest.

2. The following list names the men and shows their present status or station: Charles A. Agnetti, Valdez, Alaska; Howard G. Clifton, Valdez, Alaska; Herman DuMarce, Fort Liscom, Alaska, under orders to proceed to Paxson, Alaska; Rudolph Elmquist, Cordova, Alaska; Thomas F. Griffith, Valdez, Alaska, under orders to proceed to the United States; Durwood M. Hocker, Fairbanks, Alaska; Alex A. Kott, Seward, Alaska; John E. Pegues, Fairbanks, Alaska, furloughed to Regular Army Reserve; William R. Rogers, Valdez, Alaska; Burr M. Snyder, Valdez, Alaska; Herman B. Stenbuck, McCarthy, Alaska; Elmer D. Whittle, Fairbanks, Alaska; Emil Lains, Valdez, Alaska; Charles R. Odle, Valdez, Alaska; Donald H. Tyer, discharged; William J. Cuthbert, Valdez, Alaska; Harry Shutts, Valdez, Alaska; Richard H. L. Noaks, Cordova, Alaska, furloughed to Regular Army Reserve.

3. Information is desired as to whether or not you desire the men ordered away held here any longer and whether or not you will desire the men stationed on the first section, Washington-Alaska Military Cable and Telegraph System south of Fairbanks, Alaska, who are still in the service ordered here.

HAMNER HUSTON,

Major, Signal Corps, United States Army.

Copy furnished: James Wickersham. Anthony J. Dimond.

And the men weren't there. Liscom, Alaska, is only four or five miles away and could be reached. Cordova, Alaska, is 50 or 75 miles away, and couldn't possibly be reached. The boats weren't running.

Mr. GRIGSBY. Most of those were taken weren't they?

Mr. WICKERSHAM. Some of them were. I want to call your attention especially to that "Donald H. Tyer, discharged," and then right below that this significant thing happened:

Q. Did Judge Wickersham make any reply to that communication?—A. Yes. He wrote me a letter in reply to that.

Q. Have you that letter?—A. Yes, sir. Here it is.

Mr. Dimond then asked him:

Q. You also addressed me a letter identical in terms with the one sent to Judge Wickersham and introduced as Exhibit B?—A. Yes, sir.

Q. And I replied to you that Mr. Grigsby did not desire to take the depositions of any of these men you have mentioned?—A. Yes, sir.

Now then, I call your attention to that, because that is the only thing the War Department did. On the 33d day they gave me notice that they were going to assemble these men on or before the 6th

day of September, the last of the 40 days provided for by this resolution, not that they were going to do it then, and at that time I was in the hospital. At that time I had given notice to take depositions at these places 200 miles away and was waiting for the boat which came the next morning. I went—had to go or miss taking those depositions, I had been there for 10 days or more, trying to get the depositions of these men; had been beaten up by men who represented them under instructions by Dimond, and we had done everything we could. It seems to me human nature was not capable of doing more than we had done to get the depositions of these men.

Now, I call your attention back to the deposition of Mr. Odle again. Here is one of these men that made an affidavit and stuck in (Mr. Grigsby may have it) *ex parte* and without notice to me or anybody else. He testified in that matter: he didn't support me; he voted for Sulzer and so did every one that we got on the witness stand except Tyler admitted the truth. Tyler the son-in-law of the editor there, who had been fighting me for years, were the only ones who testified that they voted for me, and he committed perjury. It is a pretty hard matter to prove a man guilty of perjury. My attorney knew it, and a lot of those "smart Alecks" claimed they voted for me, because you couldn't prove it on hearsay. You don't know how some of them voted. The rule in a case of that kind is very different than if you were sitting on a jury trying them for perjury, or any other crime or for illegal voting. If you were trying these men under the criminal law for violating the election laws, the judge would instruct you that you must believe beyond a reasonable doubt from the evidence. That doesn't apply here. They are accused of illegally voting, voting in violation of the law, and that is admitted that they voted in violation of the law, and it is admitted by Odle he didn't support me; all of them we could get on the witness stand, testified they voted for me, and they voted for Sulzer.

Now, it is your duty to decide whether they voted for me or for Sulzer, under the civil rule. That is to say, if you are convinced from the evidence of the case, from a preponderance of the evidence that they voted for Sulzer, it is your duty to so find and under the rule where men are carried to the polls by a known partisan of the campaign, going with them to vote, and you can't find out how they voted; the rule as adopted by the House of Representatives in that kind of a case you must decide that they voted with the party who carried them to the polls. If, after they vote, a contest arise and they are defended by the opposition side, the presumption is that they are being defended by the man who didn't want them to testify they voted for him, and it is your duty to so find if the matter is fairly presented to you from that light. If, generally, you find them consorting together in collusion one with another as a body of fellows, talking with one another, all going up to vote, they won't testify themselves; the rule is that you are to find, then, that they all voted together substantially, and voted for the man who is defending them and protecting them.

Under the rule that ought to guide you, and the rule that does guide you, and you will find that rule laid down in Rowell very fully. No doubt about that. I call your attention especially to these soldiers in Valdez. I did everything I could to take their

testimony and Mr. Grigsby wouldn't take their testimony. His attorney said he didn't want to take their testimony. Yes. I got the testimony of a great many of them, but Mr. Grigsby never made the slightest attempt to take the testimony of one of them. He never subpoenaed a single voter in Alaska.

Mr. GRIGSBY. I didn't attack the legality of their vote.

Mr. WICKERSHAM. I know that. You say here to this committee some of the voters voted for me. Why didn't you have them called in and testify to it? You didn't dare to do it. You knew and your attorney knew that every one of them voted for Sulzer. Every time they were called, you and Mr. Sulzer—every time these men were called, John Clark, who was Mr. Grigsby's attorney at Fairbanks, or Dimond and his attorney at Valdez, every time these men were called they objected and advised them not to testify.

Mr. GRIGSBY. Your attorney did that?

Mr. WICKERSHAM. Where?

Mr. GRIGSBY. At Cordova and Afognak.

Mr. WICKERSHAM. A soldier?

Mr. GRIGSBY. No; no soldier, but ineligible voters.

Mr. WICKERSHAM. Well, if they did they merely followed some bad example that you set.

Mr. GRIGSBY. Oh, yes; I suppose so. You took your testimony first though.

Mr. WICKERSHAM. It don't make any difference what I did. Everywhere I went I asked for men to testify to the truth and the whole truth and there was only one man in my presence who testified to the contrary, and that was that man at Ketchikan, and he was mistaken about it.

Mr. GRIGSBY. No objection made in my presence.

Mr. WICKERSHAM. Well, you are mistaken about that.

Mr. GRIGSBY. We will talk about that later.

Mr. WICKERSHAM. We are talking about these soldiers and wherever an effort was made made to get their evidence, the strongest bar was put up.

I call your attention to the compiling of authorities in Rowell's Digest of Contested Election Cases at pages 702, 703, and 704. It is in the index.

Mr. CHINDBLOM. On page 91 of your brief?

Mr. WICKERSHAM. Yes, sir. Rowell, in his work on contested election cases, lays down the rules to be followed, and I ask if Mr. Grigsby is correct as to my attorney or agent that the same rule be applied to them as to him. I don't ask for one rule against Mr. Grigsby and another one to myself. Apply the same rule fairly to both.

I am going to read the minority report because it is the minority report, and it is the only case of that kind that you will find, and it is not the rule and was not adopted by Congress at all. This is found on page 702 of Rowell's.

This majority report is the rule that I was talking about a while ago. That was the contestee and his friends who protected and shielded these witnesses and prevented us from getting their testimony. It is because the evidence is against them, and under these rules laid down by the House in that sort of cases we are entitled,

when that state of facts is shown, to have their votes counted as for the other man.

That is the case of *DeLanoy v. Morgan*, Forty-third Congress, and I read you the minority report just a moment ago. I have just read what was adopted by the House of Representatives.

Mr. HUDSPETH. It wouldn't be a hard and fast rule in your case?

Mr. WICKERSHAM. No, sir.

Mr. HUDSPETH. Because many Republicans were supporting you and many were against you?

Mr. WICKERSHAM. Yes, sir; but when you can show that Foster, for instance, was being supported by the other man and doing all he could for him, the rule is that he should be considered as having voted for the other man.

Mr. HUDSPETH. If that is the rule, if you go up in company with a party who is a member of the opposite political party, as in my case, I was opposed to woman suffrage——

Mr. WICKERSHAM. But if you come out and shield them and help them that is pretty strong evidence.

Mr. HUDSPETH. That is true, but the fact that they accompanied them is not.

Mr. WICKERSHAM. No. If you adopted that rule there is no question about all these soldiers, not a bit. Not a bit of question about it at all.

The CHAIRMAN. What authority is that?

Mr. WICKERSHAM. That is the case of *Cook v. Cutts*, Forty-seventh Congress. This is Rowell's contested election cases.

Mr. ROWAN. I don't think you need to read any more on that point so far as that is concerned.

Mr. WICKERSHAM. I have only a little bit more.

I could go on and cite you authorities on those matters by the hour. The authorities are practically all one way. We take for instance the vote of these three soldiers at Fort Seward; this man Combs came up to Fort Seward with an automobile and got a lot of soldiers and took them down and voted them.

We could only find one of them, a man named Donald. He says he voted for Sulzer. He named two other soldiers that were taken down in this automobile. They were all talking and having a good time. They said they were Sulzer supporters and they were being herded by the United States marshal who was supporting Mr. Sulzer. The rule is that all of them voted for Mr. Sulzer and the rule is that all of these soldiers voted for Sulzer, except one who voted for me, and one who voted—Mr. Connolly didn't receive any votes there and therefore that man voted for me. It is pretty hard to get around that. That is my rule, so that all that I can possibly be charged with are four of these soldier votes and one of them didn't vote for me. There were the wives of several of these soldiers who voted, and the evidence shows that at the primary election preceding, they voted the Democratic ticket and the evidence shows, and I have it in the record here, that a lot of these soldiers who voted and refused to answer voted the Democratic ticket in the previous election, and the evidence shows further that this man Noaks voted in 1918, and since has been the attorney for Mr. Grigsby, voted for Sulzer.

Mr. O'CONNOR. I thought the mathematical process you went through showed that 16 soldiers voted for Sulzer and 7 for you.

Mr. WICKERSHAM. Yes, sir. That was Valdez Bay precinct.

Mr. GRIGSBY. Where in the record does it show that these 40 soldiers—or is it at one place?

Mr. WICKERSHAM. Oh, no; it is scattered all through.

Mr. GRIGSBY. I have been unable to find it.

Mr. WICKERSHAM. You will find it.

Mr. GRIGSBY. I find where some of them voted.

Mr. WICKERSHAM. The record shows how they all voted and their names were mentioned. We have introduced the election register.

Mr. GRIGSBY. Are you depending on that?

Mr. WICKERSHAM. We are depending on the whole record. We don't claim anybody voted in Valdez whose name doesn't appear on the record.

Mr. GRIGSBY. Is the election register in evidence?

Mr. WICKERSHAM. Yes, sir. No doubt about that. We have introduced a lot of the election records.

Mr. GRIGSBY. I haven't been able to find it and I wish you would demonstrate it.

Mr. WICKERSHAM. I have demonstrated it in my brief.

Mr. CHINDBLOM. Have you finished the matter with regard to the soldier vote?

Mr. WICKERSHAM. Not entirely. I have one authority cited by Judge Wilson.

The CHAIRMAN. Can you conclude your soldier argument in a short time?

Mr. WICKERSHAM. Yes, sir. I will promise the committee that I will not talk more than to-morrow evening except in rebuttal.

The CHAIRMAN. With the suggestion of Judge Wickersham that he desires to stop at this time, unless the committee sees fit to ask him further questions, the committee will be adjourned until 8 o'clock to-morrow evening.

(Thereupon at 11.15 p. m. the committee adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ELECTIONS No. 3,
Wednesday, March 31, 1920.

The committee met at 8.20 o'clock p. m., Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. Gentlemen, as there is a quorum present and we want to conclude Judge Wickersham's argument to-night, I think we should proceed.

STATEMENT OF HON. JAMES WICKERSHAM, CONTESTANT—
Continued.

Mr. WICKERSHAM. Mr. Chairman, I gave the committee a list of the persons who either voted illegally for Mr. Sulzer or were prevented from voting legally for me, and I would like to have it put in the record.

The CHAIRMAN. If there is no objection, it will go in.

(The statement follows:)

CONTESTED ELECTION CASE. WICKERSHAM v. SULZER AND GRIGSBY.

List of persons who either voted illegally for Sulzer or were prevented from voting legally for Wickersham, with pages of Record of Depositions, and Remarks.

Name.	Record pages.	Remarks.
FRAUDS IN CHARCOAL POINT PRECINCT.		
Chas. A. Sulzer.....	83, 122, 126, 134.....	Voted at Charcoal Point; resides in Sulzer precinct.
George A. Nix.....	122, 124, 136, 587.....	Do.
A. Van Mavern.....	134, 135, 155, 568.....	Voted at Charcoal Point; resides in Juneau.
Bert Heath.....	123, 124, 141.....	Voted at Charcoal Point; resides in British Columbia.
J. C. Cochran.....	85, 134, 137, 463, 487.....	Voted at Charcoal Point; resides in Lincoln Rock.
Jew — Taylor.....	137.....	Voted at Charcoal Point; challenged and took oath.
S. S. Kincaid.....	119.....	Voted at Charcoal Point; not 1 year in Territory.
Mrs. J. F. Kincaid.....	120.....	Do.
FRAUDS IN KETCHIKAN PRECINCT.		
Dudley G. Allen.....	84, 125, 130, 132, 147, 150-152...	Voted in Ketchikan, resided in Juneau.
Mrs. Dudley G. Allen.....	152.....	Do.
W. Chapman.....	84.....	Voted in Ketchikan, resides in Juneau.
Wm. Semar.....	84.....	Voted in Ketchikan, resides in Sitka.
Gus. Gillis and wife.....	84.....	Voted in Ketchikan, resides in Juneau.
Steve. Ragan.....	85, 127, 393-394.....	Voted in Ketchikan, resides in Haines.
Mrs. Mae Ragan.....	85, 127, 393-394.....	Do.
INDIVIDUAL FRAUDS IN SOUTHEASTERN ALSAKA.		
E. G. Morrisey.....	117, 162, 168.....	Voted at Juneau; resides Fairbanks.
J. R. McNeill.....	166, 182, 196.....	Voted at Baranof; resides Juneau.
H. J. Raymond.....	196-197, 202.....	Do.
Mrs. H. J. Raymond.....	196-197, 202.....	Do.
S. Jacobsen.....	182, 198, 202, 247.....	Do.
Mrs. S. Jacobsen.....	182, 198, 202, 247.....	Do.
Joseph A. Snow.....	153, 195, 248.....	Voted at Kake; resides at Juneau.
FRAUDULENT SUPPRESSION OF ELECTION IN NUSHAGAK PRECINCT.		
Thos. Patten.....	76-80.....	Disfranchised by Commissioner French.
Louis England.....	76-80.....	Do.
Mrs. L. England.....	76-80.....	Do.
John Bergland.....	76-80.....	Do.
Mrs. J. Bergland.....	76-80.....	Do.
Mrs. Bergland's sister.....	76-80.....	Do.
Mrs. Cassivamp.....	76-80.....	Do.
Mr. Landberg.....	76-80.....	Do.
Adolph Osterhaus.....	76-80.....	Do.
Mrs. A. Osterhaus.....	76-80.....	Do.
Hog Harry.....	76-80.....	Do.
John Nicholson.....	76-80.....	Do.
Mrs. J. Nicholson.....	76-80.....	Do.
Louis Hansen.....	76-80.....	Do.
Mrs. L. Hansen.....	76-80.....	Do.
Mr. Anderson.....	76-80.....	Do.
Mrs. Anderson.....	76-80.....	Do.
Bert Johnson.....	76-80.....	Do.
Thomas Douglas.....	76-80.....	Do.
Gust. Tretsoff.....	76-80.....	Do.
Mrs. G. Tretsoff.....	76-80.....	Do.
Fred Paulson.....	76-80.....	Do.
Mrs. Fred Paulson.....	76-80.....	Do.
Mr. Bluddy.....	76-80.....	Do.
Mrs. Bluddy.....	76-80.....	Do.
Thomas Simes.....	76-80.....	Do.

List of persons who either voted illegally for Sulzer or were prevented from voting legally for Wickersham, etc.—Continued.

Name.	Record pages.	Remarks.
CACHE CREEK PRECINCT FRAUDS.		
Election held between 4 and 5 a. m. and all voters out of the precinct before 8 a. m. Names of electors in returns.	282-294.....	Whole election void for fraud: Votes cast— Sulzer..... 23 Wickersham..... 2 Connolly..... 1 Total votes..... 26
FRAUDULENT SUPPRESSION IN FORTY MILE ELECTION DISTRICT.		
Walter Hunt.....	257.....	Wade, disfranchised, would vote W.
W. M. Patterson.....	258.....	Wade, disfranchised, would vote S.
John A. Lambert.....	258.....	Wade, disfranchised, would vote W.
T. E. Phillips.....	259.....	Do.
Hannah J. Johnson.....	259.....	Do.
C. D. Arnold.....	260.....	Steel Creek, disfranchised, would vote W.
Henry Siemer.....	260.....	Do.
J. A. Kemp.....	261.....	Do.
C. B. Ewing.....	262.....	Do.
Mrs. J. A. Kemp.....	263.....	Do.
E. L. Eckstein.....	263.....	Wade, disfranchised, would vote W.
Geo. A. Pilz.....	264.....	Do.
A. Lassen.....	264.....	Wade, disfranchised, would vote Socialist.
John Ostergard.....	265.....	Wade, disfranchised, would vote Sulzer.
Chas. E. M. Cole.....	266.....	Wade, disfranchised, would vote Wickersham.
John Haan.....	269.....	Wade, disfranchised, would vote W.
Mrs. Agnes Hick.....	270.....	Do.
George Hick.....	270.....	Do.
INDIVIDUAL FRAUDS IN VALDEZ PRECINCT.		
C. W. Mossman.....	161, 219, 221-222, 271, 331 (No. 8)	Deputy United States marshal, voted in Valdez; resides in Anchorage.
Mrs. C. W. Mossman.....	161, 219, 221-222, 295, 331 (No. 83)	Wife of above, voted in Valdez; resides in Anchorage.
Jas. E. Mitchell.....	221, 332, (No. 144).....	Resides in Valdez Bay precinct; voted in Valdez.
Mrs. J. E. Mitchell.....	221, 332 (No. 146).....	Do.
Mrs. C. O. Brauer.....	221, 331 (No. 78).....	Resides in Valdez Bay precinct; voted in Valdez. Canadian.
UNITED STATES SIGNAL CORPS, ARMY, FRAUDS.		
Chas. A. Agnetti.....	55, 226, 228, 324.....	Fort Gibbon soldier; says he voted for Sulzer.
Wm. T. Barr.....	55, 255.....	Admits voted for Sulzer.
Ike A. Beal.....	55, 62-63, 226.....	Fort Gibbon soldier; refused to answer.
Ed. A. Beattie.....	55, 255.....	Nulato soldier; voted for Sulzer.
Jas. W. Boon.....	55, 319.....	Fort Gibbon soldier; refused to answer.
Jas. M. Campbell.....	55, 256.....	Refused to answer.
H. G. Clifton.....	55, 226, 228, 326.....	Sitka soldier; says he voted for Sulzer.
H. B. Connover.....	55, 253.....	Do.
Ralph N. Cummins.....	55, 252.....	Refused to answer.
Wm. J. Cuthbert.....	55, 226, 228.....	Voted in Copper Center; every vote Sulzer.
Herman DuMarce.....	55, 334, 337.....	Voted at Gulkana.
Jas. A. Ellison.....	55, 340, 600.....	Valdez soldier; not present when depositions were taken.
Rudolph Elmquist.....	55, 324.....	Admits he voted for Sulzer.
Max H. Faust.....	55, 71-6, 160, 226, 233, 324.....	Refused to answer.
Thos. F. Griffith.....	55, 226, 228.....	Sitka soldier; says he voted for Sulzer.
Guy B. Hawley.....	55, 253.....	Fairbanks soldier; refused to answer; voted 1916.
D. M. Hoeker.....	55, 298-301, 309-10.....	Refused to answer.
Alex A. Kott.....	55, 214, 226, 228, 324.....	Went to Nome; could not get deposition.
Leo Kraft.....	55.....	Refused to answer.
Emil Lains.....	55, 226, 228.....	Nulato soldier; voted for Sulzer.
Jas. P. Lake.....	55, 319.....	Post surgeon (contract); Fort Gibbon.
Dr. W. E. Leonard.....	55.....	Sitka soldier; voted for Sulzer.
Phil F. McQuillan.....	55, 251.....	Nulato soldier; affidavit voted for Sulzer.
Horace R. Morgan.....	55, 684, 707.....	Grigsby's attorney of record.
R. H. L. Noaks.....	55, 161, 214, 218, 226, 233, 239, 240, 323, 368-72.....	
Chas. R. Odle.....	55, 226, 227.....	Valdez soldier.
John E. Pegues.....	55, 301-4, 309-10.....	Fairbanks soldier; refused to answer.

List of persons who either voted illegally for Sulzer or were prevented from voting legally for Wickersham, etc.—Continued.

Name.	Record pages.	Remarks.
UNITED STATES SIGNAL CORPS, ARMY, FRAUDS—contd.		
Wm. R. Rodgers.....	55, 226, 228.....	Editor Fairbanks Citizen, Democrat; refused to answer.
R. L. Secaree.....	55.....	Secaree in China service; could not get deposition.
Louis G. Selk.....	55, 257.....	Fort Gibbon soldier; refused to answer; voted 1916.
Harry Shutts.....	55, 214, 226, 228, 324.....	Refused to answer.
B. M. Snyder.....	55, 226, 228, 324.....	Do.
Herman D. Stenbuck.....	55, 317.....	Fairbanks soldier; refused to answer.
C. C. Stroupe.....	55, 321.....	Nulato soldier; refused to answer.
Donald H. Tyer.....	55, 205-8, 214, 226-8.....	Says voted for Wickersham; not true.
H. Van Wyek.....	55, 64, 71, 226, 228.....	Admits voted for Sulzer.
H. G. Wescott.....	55, 321.....	Nulato soldier; instructed not to answer.
E. D. Whittle.....	55, 308-10.....	Fairbanks soldier; refused to answer; deposition lost.
H. W. Whitman.....	55, 252.....	Sitka; says he voted for Wickersham; doubtful.
Jas. B. Looney.....	60-62.....	Seward soldier; admits he voted for Sulzer.
Henry L. Labisky.....	63-64.....	Southeast Alaska soldier; says he voted for Wickersham.
Mrs. M. H. Faust.....	219, 325, 332.....	Capt. Faust's wife; voted at Democratic primary.
Mrs. W. J. Cuthbert.....	219, 226, 229, 332.....	Wife of Wm. J. Cuthbert; sick (baby) when she "refused to answer."
Mrs. D. H. Tyer.....	208-13, 214, 219, 226, 228, 230, 331.....	Selby's daughter; voted for Sulzer; refused to answer.
Mrs. Luey Ellison.....	340, 600.....	Gulkana; husband and friends for Sulzer.
SOLDIER FRAUDS AT FORT SEWARD, HAINES PRECINCT.		
George E. Doyle.....	177-80.....	Voted for Sulzer by United States Deputy Marshal Coombs.
Sidney Gross.....	177-80.....	Do.
Soldier Wilson.....	177-80.....	Do.
SOLDIER FRAUDS, VALDEZ BAY PRECINCT.		
Fred C. Hartman.....	216, 222, 238, 241-4, 329, 593.....	Conscripted soldier; Fidalgo Bay.
C. A. Edmund.....	216, 222, 238, 241-4, 329, 593.....	Conscripted soldier; Copper River region.
H. M. Lawrence.....	216, 222, 238, 241-4, 329, 593.....	Conscripted soldier; LaTouche.
E. C. Rueter.....	216, 222, 238, 241-4, 329, 593.....	Conscripted soldier; Valdez.
Jerry T. Allen.....	216, 222, 238, 241-244, 329, 593.....	Regular soldier, Fourteenth Infantry.
Pete Tessitore.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier, Treadwell.
John Turner.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier, Copper River region.
Charles Wyatt.....	216, 222, 238, 241-244, 329, 593.....	Do.
J. D. Chamberlain.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier, Anchorage.
Frank Forker.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier, Kodiak.
John T. McEvay.....	216, 222, 238, 241-244, 329, 593.....	Regular soldier, Fourteenth Infantry.
Patriek McDermott.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier; place not known.
Frank Poore.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier from Kennecott.
Claude H. James.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier somewhere in Alaska.
Erie Myhberg.....	216, 222, 238, 241-244, 329, 593.....	Conscripted soldier from Kennecott.
A. J. Penttinen.....	216, 222, 238, 241-244, 329, 593.....	Regular Army soldier.
Lysle D. Brown.....	216, 222, 238, 241-244, 329, 593.....	Conscript, McCarthy, judge of election.
A. E. Rueker.....	216, 222, 238, 241-244, 329, 593.....	Conscript, Valdez, judge of election.
Joseph Newman.....	216, 222, 238, 241-244, 329, 593.....	Regular Army soldier.
E. A. Johnson.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Cordova.
R. B. Hamilton.....	216, 222, 238, 241-244, 329, 593.....	Regular Army soldier.
Fred C. Bretherson.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Cordova.
A. J. Davis.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Katalla.
Mrs. J. W. Johnson.....	216, 222, 238, 241-244, 329, 593.....	Wife of post surgeon; residencee Sitka.
Dr. J. W. Johnson.....	216, 222, 238, 241-244, 329, 593.....	United States Army surgeon; residencee Sitka.
George F. Baker.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Anchorage.
H. T. Anderson.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Katalla.
Wm. N. Hoaring.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Anchorage.
Bruce Rider.....	216, 222, 238, 241-244, 329, 593.....	Conscript from Valdez.
P. S. Truekey.....	216, 222, 238, 241-244, 329, 593.....	Conscript Copper River region.
A. B. Presley.....	216, 222, 238, 241-244, 329, 593.....	Conscript La Touche.
CIVILIANS AT FORT LISCOM WHO VOTED, LEGAL VOTES.		
Ed. P. Cashman.....	215-217.....	Voted for Wickersham.
Mrs. E. P. Cashman.....	217-218.....	Do.
Sam. Campbell.....	237-238.....	Do.
W. S. Beck.....	238-239.....	Do.
W. T. Stuart.....	239-240.....	Voted for Sulzer.

List of persons who either voted illegally for Sulzer or were prevented from voting legally for Wickersham, etc.—Continued.

Name.	Record pages.	Remarks.
BRIBERY AND FRAUD AT COPPER CENTER PRE- CINCT.		
(See pp. 111-115 contestant's brief.)		
Charles Cowell.....	334, 337, 692-695, 707-708.....	Recommended Glass for postmaster; p. 374. Postmaster at Copper Center; p. 374.
T. R. Glass.....	334, 337, 692-695, 707-708.....	
Alave Larson.....	334, 337, 692-695, 707-708.....	
C. W. Littlejohn.....	334, 337, 692-695, 707-708.....	
J. B. Pippin.....	334, 337, 692-695, 707-708.....	
John McCrary.....	334, 337, 692-695, 707-708.....	
M. F. Grifflith.....	334, 337, 692-695, 707-708.....	
James Mauke.....	334, 337, 692-695, 707-708.....	
Herman DuMarce.....	334, 337, 692-695, 707-708.....	Soldier, United States Army; Signal Corps, p. 55, record.
W. R. Cameron.....	334, 337, 692-695, 707-708.....	
HYDA INDIAN RESERVATION FRAUDS.		
Paul Morrison.....	106, 440, 453, 470.....	Voted in Sulzer precinct; par. 6, p. 10, record.
Sidney N. Carle.....	106, 440, 453, 470.....	
Peter Nathan.....	106, 440, 453, 470.....	Do.
R. Edenshaw.....	106, 470, 574-575.....	Do.
Charles Scott.....	106, 440, 453, 470.....	Do.
Jack Edenshaw.....	106, 440, 453, 470.....	Do.
Boyd Nakaptla.....	106, 440, 453, 470.....	Do.
Luke Frank.....	106, 440, 453, 470.....	Do.
Alex Peele.....	106, 440, 453, 470.....	Do.
Joseph Nix.....	106, 470.....	Do.
Louis Tom.....	106, 470.....	Do.
Mike George.....	106, 470.....	Do.
R. D. Nathan, jr.....	106, 470.....	Do.
Richard Nix.....	106, 470.....	Do.
Adam Spoon.....	106, 470.....	Do.
Jim Wallace.....	106, 583-587.....	Do.
William Peele.....	106, 440, 453, 470.....	Do.
Walter Frank.....	106, 576-583, 470.....	Voted in Sulzer precinct; says did not vote, p. 578.
KLAWAK INDIAN RESERVA- TION FRAUDS.		
Thaddenes Isaacs.....	106, 184, 187, 415, 418, 424, 473.	Voted at Craig; resides at Hyda.
George Demmert.....	106, 184, 187, 415, 418, 424, 473.	Voted at Craig; par. 6, p. 10, record.
R. J. Peratovich.....	106, 184, 187, 415, 418, 424, 473.	Do.
J. K. Williams.....	106, 184, 187, 415, 418, 424, 473.	Do.
C. P. Wilson.....	106, 184, 187, 415, 418, 424, 473.	Do.
Johnnie Wilson.....	106, 184, 187, 415, 418, 424, 473.	Do.
Jack Peratovich.....	106, 184, 187, 415, 418, 424, 473.	Do.
Sam Gunyah.....	106, 184, 187, 415, 418, 424, 473.	Do.
C. W. Demmert.....	106, 184, 187, 415, 418, 424, 473.	Do.
Peter Annisket.....	106, 184, 187, 415, 418, 424, 473.	Do.
Wm. Stewart.....	106, 184, 187, 415, 418, 424, 473.	Do.
R. D. Collins.....	106, 184, 187, 415, 418, 424, 473.	Do.
Frank William.....	106, 184, 187, 415, 418, 424, 473.	Do.
Arthur James.....	106, 184, 187, 415, 418, 424, 473.	Do.
Clyde Fields.....	106, 184, 187, 415, 418, 424, 473.	Do.
Tecumsa Collins.....	106, 184, 187, 415, 418, 424, 473.	Do.
John W. Anniskets.....	106, 184, 187, 415, 418, 424, 473.	Do.
Sam Davis.....	106, 184, 187, 415, 418, 424, 473.	Do.
Lee Annisket.....	106, 184, 187, 415, 418, 424, 473.	Do.
Maxfield Dalton.....	106, 184, 187, 415, 418, 424, 473.	Do.
Will Skulka.....	107, 108, 184, 193.....	Hyda, voted at Craig; par. 6, p. 10, record.
John Skulka.....	108, 193.....	Do.
Albert Natkong.....	108, 193.....	Do.
Edwin Scott.....	108, 193.....	Do.
Frank Paul.....	108, 193, 419.....	Do.
Charlie Brown.....	107, 194, 419.....	Indian resides at Tokeen; voted at Craig; par. 6, p. 10, record.
John Brown.....	107.....	Hyda.
AUK INDIAN VILLAGE FRAUDS.		
George Ed. Martin.....	184, 186, 193, 401.....	Voted at Juneau; Sulzer; p. 635.
Albert Samuels.....	184, 401.....	
Herbert Martin.....	184, 401.....	Sulzer, p. 658; see par. 10, p. 11, record. Sulzer, p. 657; see par. 10, p. 11, record. See par. 10, p. 11, record. Do.
Billy Martin.....	184, 186, 193, 401, 658.....	
Tilly Martin.....	184, 401, 657.....	
Pete Smith.....	184, 401.....	
Frank Peters.....	184, 401.....	

List of persons who either voted illegally for Sulzer or were prevented from voting legally for Wickersham, etc.—Continued.

Name.	Record pages.	Remarks.
AUK INDIAN VILLAGE FRAUDS—continued.		
Willie Peters.....	184, 186, 192, 402, 619.....	Sulzer, p. 666; see par. 10, p. 11, record.
Francis Joseph.....	184, 397, 402.....	Do.
Charlie Gray.....	184, 186, 192, 664.....	Sulzer, p. 664; see par. 10, p. 11, record.
George Howard.....	184, 401.....	Do.
Jack Gamble.....	184.....	Do.
Charlie Bobb.....	184.....	Do.
Jimmie Hanson.....	184.....	Do.
George Gamble.....	184, 401.....	Do.
Charlie Peters.....	184, 186, 193, 401, 651.....	Sulzer, p. 652; see par. 10, p. 11, record.
James Miller.....	184.....	Do.
John Harris.....	184, 401.....	Do.
Harry Anderson.....	184, 397, 402.....	Do.
Charlie Gamble.....	184, 401.....	Do.
DOUGLAS INDIAN VILLAGE FRAUDS.		
Jimmie Fox.....	169, 173, 186, 191, 398, 655.....	Douglas, Indian town; voted for Sulzer, p. 656.
Daniel Josephs.....	173, 186, 190, 398, 659.....	Voted for Sulzer, p. 660.
Gilbert Jackson.....	169, 173, 186, 190, 398, 662.....	Voted for Sulzer, p. 663; see par. 9, p. 10, record.
Wm. Brady.....	170, 173, 186, 191, 398.....	Voted for Wickersham.
Edw. Marshall.....	170, 173, 186, 191, 398, 660.....	Voted for Sulzer, p. 660.
John Willis.....	170, 173, 186, 189, 398, 652.....	Voted for Sulzer, p. 654.
John Harris.....	170, 173, 398.....	Challenged, but took oath and voted.
MISCELLANEOUS FRAUDS.		
John Probst (for Wickersham).	276, 279-281.....	Ballot box removed from polls, Chickaloon precinct, to get sick man's vote; Probst could not go back, and so lost vote.
Frank Kelley (for Sulzer)...	276, 279-281.....	Ballot box, books, etc., carried to his house.
Olaf Thoransen.....	410, 411.....	Challenged, swore in to vote, but refused; voted for Wickersham.
AUSTRALIAN BALLOT FRAUDS.		
Frauds in 8 precincts.....	790, p. 11, record.....	In precincts of Hadley, Kake, Loring, Tenakee, Tokeen, Windham, Chisana, and Ninielchik. In these precincts Sulzer had 67 votes and Wickersham 37; loss, Sulzer, 30. Iaukea v. Kalonianolle, 59 Cong. Moores, p. 30. See par. 11, p. 11, record.
KUSKULANA PRECINCT FRAUDS.		
[Par. 21, Notice of contest.]		
Testimony.....	16,373.....	Donohoe explains the matter at p. 375.
Protest attorneys for contestant.	790.....	Created 2 voting places in one precinct.
NAKNEK PRECINCT FRAUDS.		
.....	Par. 18, p. 15, record.....	Williams v. Potter, 114 Ill., 628; Snowfall v. People, 147 Ill., 260 (268.) Compare with action at Sour Dough precinct. Charge 20, p. 15. Rowell, p. 752; 40th and 43d Cong.; Rowell, p. 678, 48th Cong.
UNALASKA AUSTRALIAN BALLOT FRAUDS.		
Fraud charged.....	Par. 17, p. 14, record.....	Evidence in support in official returns. Solid for Sulzer. No official ballots. Why.
FRAUDS IN VOTING "ANY- WHERE IN DIVISION."		
Fraud charged.....	6, par. 9, record.....	
Grigsby guilty.....	546-547.....	Party to the stipulation; Attorney General.
Walker.....	363-364.....	
Foster affidavit.....	365-366.....	Hudson told Foster in advance.
Spencer.....	719-720.....	

Thirty-seven votes were cast in Valdes Bay precinct (p. 329); 5 votes were legal; 31 votes were illegal, as follows: For Connolly, 1 illegal vote; for Sulzer, 23 illegal votes; for Wickersham, 7 illegal votes; 31 illegal votes.

Mr. WICKERSHAM. I have also a list prepared showing the list claimed by the contestee who have voted illegally for me, and I would like to have that go into the record.

The CHAIRMAN. If there is no objection it will go in.
(The statement follows:)

CONTESTED ELECTION CASE OF WICKERSHAM V. SULZER AND GRIGSBY.

List of persons claimed by contestee to have voted illegally for contestant.

Name.	Record page.	Remarks.
Mrs. Hans Hanson.....	360.....	Voted for Wickersham; only 6 months in Alaska.
Gust Cozakes.....	361.....	Voted for Wickersham; not citizen of United States.
Wm. Zacharias.....	363, 366, 347, 547, 719.....	Voted at Cordova; residence, Brooks; hearsay.
Mrs. Wm. Zacharias.....	363, 366, 719.....	Do.
J. C. Lemoin.....	363, 366, 547, 719.....	Do.
J. B. Hudson.....	363, 366, 547, 719.....	Do.
Al. Raynor.....	364, 366, 547, 719.....	Do.
— Stokes.....	364, 366, 547, 719.....	Do.
— Hyde.....	364, 366, 547, 719.....	Do.
Foster's affidavit.....	366.....	Not evidence in ease.
Arthur Pinkers.....	366.....	Did not vote for Wickersham.
Wm. R. Gerrie.....	377, 689.....	Not a citizen of United States.
Ivan Derenoff.....	382, 689.....	Voted for Wickersham; citizen by treaty 1867.
Matfey Agick.....	383, 689.....	Do.
Alex. Nekrasoff.....	383, 689.....	Do.
Michael Boskofsky.....	384, 689.....	Do.
Alex. Lukin.....	385, 689.....	Do.
Paul Nekasoff.....	386, 689.....	Do.
Sergay Sheratine.....	387, 689.....	Was not asked for whom he voted.
Timsfey Naya.....	388, 689.....	Voted for Wickersham; citizen by treaty 1867.
Simeon Berestoff.....	388, 689.....	Do.
John Tanshwak.....	389, 689.....	Did not vote.
W. H. Hannum.....	458.....	Question of residence at Ketchikan.
Mrs. Ida Hannum.....	462.....	Do.
Charles Starish.....	465.....	Indian; resides at Saxman; voted at Charcoal Point.
Jimmie Starish.....	468.....	Do.
Sam Olson.....	480.....	Voted for Wickersham, Kasaan; resides at Ketchikan.
Ben Ridley.....	493, 587.....	Voted for Wickersham; citizen; property; legal voter.
George Booth.....	497.....	Voted for Wickersham; resides at Ketchikan; citizen.
Henry Sehafer.....	502.....	Voted Democrat; refused to state.
Louis Hudson.....	505.....	Resident of Ketchikan; citizen.
Geo. Johnson.....	508, 587.....	Resident of Ketchikan; citizen; property.
Jimmie Starr.....	511, 587.....	Do.
Matt. Fawcett.....	514, 587.....	Resident of Ketchikan; born in British Columbia; property.
Paul Mather.....	516, 587.....	Naturalized citizen; property.
Caspar Mather.....	520, 587.....	Do.
Joe John.....	522, 587.....	Resident of Ketchikan; citizen; property.
E. R. Ridley.....	526, 587.....	Do.
Herman Ridley.....	526, 587.....	Do.
Joe Starr.....	527, 587.....	Do.
George Keegan.....	529.....	Do.
Geo. James.....	531.....	Do.
Mark Williams.....	568.....	Resided at Saxman; voted at Charcoal Point.
Rufus Edenshaw.....	574, 575.....	Indian from Hydaburg; Sulzer, 575.
Walter Frank.....	576, 578.....	Do.
Jim Wallace.....	583, 586.....	Indian from Hydaburg; voted for Sulzer, 586.
E. W. Brown.....	636.....	Moe says voted at Fairbanks; resides at Brooks; hearsay.
Martin Claich.....	636-637, 680.....	Question of residence; hearsay.
Wm. Canning.....	637.....	Do.
D. L. Green.....	637.....	Do.
Ernest Peterson.....	638, 682.....	Do.
E. R. Peoples.....	638.....	Do.
Sylvester Howell.....	639.....	Do.
Olaf Thoreson.....	410, 411.....	Ballots not counted; challenged p. 411.

Mr. WICKERSHAM. Now, Mr. Chairman, I also have here a copy of Judge Wilson's opinion, and I will leave it with the committee.

The Chairman. Do you want to put that into the record?

Mr. WICKERSHAM. Not without you think it ought to go into the record.

The CHAIRMAN. We will have access to it.

Mr. WICKERSHAM. Yes. It is a public document, and there are plenty of them, of course, so that there is no difficulty about that.

Now, Mr. Chairman, I have got to the end of the soldier matter, except that I want to call the attention of the committee to the opinion mentioned by Judge Wilson in his report. It is in the Pennsylvania reports, but you can get it from the Pennsylvania reports as well as I can.

Mr. HUDSPETH. Before you go into that, will you permit me to ask you a question here?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. I think it would have some bearing on this question. The question is with reference to the question of your taking testimony up there. As I recall it, last night you stated that you were beaten up, that you were assaulted?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. By or through the advice or connivance of a man by the name of Dimond?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. Who was attorney for Mr. Grigsby?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. Now, what do you base that statement on, that Dimond was the instigator of that assault?

Mr. WICKERSHAM. Well, I based it upon the fact that as I crossed the street diagonally to where these men were waiting for me, before I got to them he was talking with them, and from his testimony and from their testimony, they were calling me foul names; he saw me coming to them and was standing there listening to these assaults of language on me; then, just as I got close to them, he turned and went away.

Mr. HUDSPETH. Was he present and saw them assault you?

Mr. WICKERSHAM. He turned and walked away so that his back was to us. He walked down the street a hundred feet before he turned around, or his attention was called, as he says. He denies it. But his actions have been so partisan, so ugly, so vicious all the way through that I have no doubt that he knew those men were there waiting for me. One of them was partly in the house, Hayden, and the other was standing out, and I did not know either one of them as I came up to them; just then the younger one of the two—the son—came up to me and said something to me—said that I had insulted his sister. I was astounded. I did not know who it was, and did not know what it meant or anything. I replied, "No; I have not done anything of the kind." "Yes, you have. I am going to beat you," and he struck me. Just then the other one bounced out, and he called me all the foul names that he could think of. I am blind in my right eye, totally, and partly in my left eye. But as long as I could see this fellow I could defend myself; but just then the other one struck me from the blind side and knocked me off the sidewalk, and then assaulted me and beat me up. That is in the record.

Mr. HUDSPETH. There is no evidence that Mr. Grigsby had any connection with that?

Mr. WICKERSHAM. Not at all. Mr. Grigsby was not there. But I have no doubt that this man, Mr. Grigsby's attorney, knew all about it. He was mayor of the town. He made no pretense of doing anything about it except when he came there, and took one off, laughing, and left me there to be taken to the hospital.

This young fellow, it turns out, was the brother of Mrs. Tyer. Mrs. Tyer was examined before the notary public by me. I asked her questions and I treated her just as nice as I knew how. There was not anything ugly in any shape, manner, or form. Her husband sat there all the time. He never said a word. He was a big, strong soldier. There was no trouble between us at all. But this was what really got them started. She went home and began crying because I said that I was going to hold them there until the next boat because I wanted to take further testimony. He had testified as my witness and everybody told me he had testified falsely that he had voted for me. We were satisfied that he did not, and I wanted to hold him until the next day to get further testimony, and she wanted to go home; she began to cry, and then they came down and waylaid and assaulted me; this man, Dimond, was there with them.

Mr. GRIGSBY. You say he led one of them away after the fight was over?

Mr. WICKERSHAM. Yes.

Mr. GRIGSBY. You are sure about that?

Mr. WICKERSHAM. I am not sure about that. I am only sure that he said that he came there and took the young fellow by the arm, and they did walk off just about the same time I went.

Mr. HUDSPETH. No effort was made to prosecute them?

Mr. WICKERSHAM. I stood no more show in that community than a revenue officer does down in Georgia, not a bit.

Now, I call the attention of the committee to the facts of this case of *Taylor v. Reading*, which is quoted by Judge Wilson in his opinion, and it is in the Fourth Brewster (Pennsylvania), and I call the attention of the committee to it because it is the decision of the committee of the House of Representatives, and it is in the Pennsylvania reports, but is the decision of the House of Representatives on the contested election case. It is page 447 that I am going to read from. The committee here says in this report [reading]:

It is in proof that 20 soldiers of the United States Army, stationed at Frankford Arsenal, voted for the incumbent in the eighth precinct of the twenty-third ward. Had these men a right to vote there? It is entirely immaterial to discuss the question as to whether they could have voted elsewhere or not. The only question before us is as to whether they were entitled to vote at that particular poll, where the vote was actually cast. To entitle a person to vote at any poll in Pennsylvania, under the laws of that State, he must have at the time of the election an actual residence in the precinct. Mere personal presence will not fulfill the requirements of the law. There must be a residence, and it has been well settled that residence is a question of intention. Had any of those men any intention to be at that particular place, or in that particular precinct, on that or any other day? From the necessity of the case they could not. They were in that precinct not by their own volition, but by command of their military superiors. An order issued to transfer them to Fort Lafayette on October 1 would have taken them far away from the precinct.

In the case of *Bowen v. Given* it was expressly decided that an enlisted man did not gain a residence under similar circumstances. So, too, in the case of *Howard v. Cooper* (36 Cong., Contested Election Cases, 1834 to 1865, p. 275)

It was held under the law of Michigan that to be entitled to vote a man must have come into the State and township or ward with the intention of making it his permanent residence, and the law of Pennsylvania is quite as strict on this point as that of any other State, for if challenged at the polls the person offering the vote must also himself swear that his bona fide residence in pursuance of his lawful calling is within the district. (See Purdon's Digest, Laws of Pennsylvania, edition of 1853, p. 286 and p. 46). How could a man so swear when he is there at the command of a power superior to his own will? As bearing particularly upon this point we add that in 1862 a contest arose in the State of Pennsylvania in regard to the right of soldiers to vote in camp or in quarters. In the trial of this case the constitution of Pennsylvania and the several statutes of the State regulating this subject or question were fully and elaborately considered. The case is entitled *Chase v. Miller*, and reported in 5 Wright, 403, et al.

Now, that case is also here, and these are the two cases Judge Wilson relies upon in part at least in his opinion.

The CHAIRMAN. Was the other case a case of the Supreme Court of Pennsylvania?

Mr. WICKERSHAM. The other is the Supreme Court of Pennsylvania. This, however, is a case arising in the House of Representatives. [Reading:]

The supreme court of the State held:

First. That residence in the constitution is the same as domicile—the place where a man establishes his abode, makes the seat of his property, and exercises his civil and political rights.

Second. The right of a soldier to vote under the constitution is confined to the election district where he resided at the time of his entering the military service.

The opinion in this case, which is quite lengthy, and covers the entire ground, was delivered by Woodward, judge, and from it we quote. (The court below had decided in favor of the soldier's right to vote, and his judgment was being reversed by the Supreme Court.)

The learned judge deprecates a construction that shall disfranchise our volunteer soldiers. It strikes us that this is an inaccurate use of language. The constitution would disfranchise no qualified voter. But, to secure the purity of election, it would have its voters in the place where they are best known on election day. If a voter voluntarily stays at home, or goes on a journey, or joins the Army of his country, can it be said the constitution has disfranchised him? Four of the judges of this court, living in other parts of the State, find themselves on the day of every Presidential election in the city of Pittsburgh, where their official duties take them and where they are not permitted to vote. Have they a right to charge the constitution with disfranchising them? Is it not the truth rather than this, that they have voluntarily assumed duties that are inconsistent with the right of suffrage for the time being?

Mr. GRIGSBY. Is that the court's opinion?

Mr. WICKERSHAM. That is the latter part of the court's opinion.

Mr. GRIGSBY. Did they not count the soldiers' votes in that election?

Mr. WICKERSHAM. If you find it does not lay down the rule as I have said, you will call it to the attention of the committee.

Mr. GRIGSBY. What is the title?

Mr. WICKERSHAM. *Taylor v. Reading*.

Now, I want to call the committee's attention to one other matter which Mr. Grigsby has got in his brief, and that is sections 1859 and 1860 of the United States Statutes. He thinks that sections 1859 and 1860 have some influence in this case about the law, and he has cited them in his brief, and they were cited in the other case, they were before Judge Wilson in the other case, so that the matter is not new.

But I want to call it to the attention of the committee here, and I want you to remember that the act of Congress in 1906 fixes the qualifications of electors in Alaska, and fixes them altogether different from what these two sections fixes them.

Section 1859 has nothing to do with the situation. Mr. Grigsby says that these are general provisions which relate to all Territories organized after the passage of these laws. These laws are in the statutes of 1878. They are all Territorial statutes which were in effect long before the act of 1906, which is exclusive, was passed.

Section 1859 provides that "every male citizen over the age of 21"—now then, listen to this: "Including persons who have legally declared their intention to become citizens of any Territory hereafter organized and who are actual residents of the Territory at the time of such organization shall be entitled to vote at the first election of such Territory."

That has nothing to do with this case at all—"and to hold any office therein; subject nevertheless, to the limitations specified in the next section."

Now, that only refers to the election held in a Territory. This is the sixth election; so even from this standpoint it has nothing to do with that; and if that section should be taken as having any effect in Alaska, it would let people vote on their first papers, which we, of course, can not do in Alaska because the statute expressly provides that we shall not.

Section 1860 provides that [reading]:

At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each Territory.

Now, Mr. Grigsby thinks that the Territorial legislature for that reason has the right to fix the qualifications of voters. That is, he has written his brief upon that assumption, I suppose, although he has held, to the contrary, that the Territorial legislature has no such authority. He sent an opinion to the governor, which is before this committee, that the Territorial legislature is utterly without jurisdiction to change the qualifications of electors as fixed by the act of 1906, but "subject, nevertheless, to the following restrictions on the power of the legislature, namely, first," the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21 years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such and by taking an oath to support the Constitution and the Government of the United States.

Now, nobody on his first papers can vote in Alaska, because the act of 1906 expressly declares that he must be a citizen of the United States; and nobody does vote; and one of the votes that was cast out as against me at the last election was a man by the name of Forson, or something of that kind, who had been in Alaska for 20 years but only had his first papers. Mr. Wilson threw out his vote. I conceded that it was right, because he was not a citizen of the United States. That is what this act has reference to. This act does not touch our situation at all. It is an old act which was superseded by the act of 1906, which expressly fixes the qualifications of voters in Alaska, and is exclusive.

Now, the third subdivision here provides [reading]:

Every officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

Now, Mr. Grigsby seems to intimate, at least, that that is in effect in Alaska, but it is not, because it is excluded by the third section of the act of 1906, which provides for the qualification of electors, and it is exclusive. And I want to call your attention to this matter now, if the clause ever had any effect in Alaska all, which it had not, under this clause if a soldier came into Alaska and was discharged the next day after he got there, which is sometimes done, and he remained six months, and the election was the next day, he could vote. But the statute of 1906 says that he must have been in the Territory for a year, and it is exclusive, and this law has no force or effect in Alaska at all.

It is one of those old statutes which provided in general terms for the government of the Territory before our act of 1912 was passed. So that it is absolutely of no validity in Alaska.

Now, Mr. Chairman, the next question I want to call to the attention of the committee is that there was a fraud in the use of the Australian ballot in certain precincts in Alaska.

The act of 1915, which I think is void, provides for the issuance of an official ballot by the clerk of the court to be sent out to all of the commissioners in the election precinct and to be distributed by them with the paraphernalia to the officers of the various precincts and districts. Those official ballots are made up for the electors by the clerks of the courts, printed by the clerks, and sent out to the governor. The act of 1915, under which they are issued, provides [reading]:

SEC. 3. The ballots shall be headed "Official ballots" of the judicial division in which it is issued, and at the top thereof, above a perforated line, shall be duplicate stubs bearing consecutive numbers; one of said stubs to be retained by the election judges upon presenting the ballot to the voter; the other stub to be torn from the ballot by the election judges and compared and retained upon the return of the voter from the voting booth, and each official ballot shall contain under the title of each office one blank space for as many candidates as may be voted for to fill such office, below the printed names of candidates, upon which may be written names of candidates or persons whose names are not printed upon the "Official ballot." The clerk of the court shall, in preparing said ballot, provide space in conformity with this act for the names of candidates for any additional offices which may hereafter be created for the Territory.

Now, to make a long story short, in several of these precincts which we have set out here and to which objection was made at the time of the canvass of the returns, this law was not complied with. The protest, found in the record of the canvassing board, made by my attorneys is [reading]:

The records before the board will show that there are in the first division six precincts in which the ballots are void for the reason above stated, and in the third division there are two such precincts. The precincts referred to are the following: In the first division, Hadley, Kake, Loring, Tenakee, Token, and Windham. In the third division, Chisana and Ninilchik.

Now, this is what happened. Official ballots were handed out to voters in that precinct, and they retired and marked them up, and

when they were passed out the official did not tear off this part of the perforated stub at the top with the number on it. He left it out there. The voter took his ballot and brought it back, and it was doubled up and put in the ballot box, then he was registered, and the registering and numbering was chronological. These ballots are numbered chronologically, and they are not the same number that is given to his name in the record, but by tracing them down in that way you can locate every man who votes in those precincts. That law was not complied with, and there is objection made to the votes in these precincts for that reason.

The CHAIRMAN. Judge, your claim is that it was not necessary to comply with this statute?

Mr. WICKERSHAM. It was not necessary in Hawaii, either. Now, here is the Hawaiian decision, *Iauken v. Kalaniana'ole*. This very question was passed on in a case not nearly as strong as mine, because our territorial law did require these things to be done, did require the secrecy of the ballots to be preserved, did require that stub to be torn out when it was given to the voter, and required the other stub to be torn out when it was sent back, so that nobody could tell how he voted, so that the ballot could be compared with the registry number, not to determine who voted in that way, but by leaving those two on there and comparing them with the registration, you could tell for whom the man voted. Now, in this case from Hawaii, in the Fifty-ninth Congress, decided by Elections No. 3, of which Michael E. Driscoll, of New York, was chairman, and of which Claude Kitchin was one of the members, Randell, Kitchin, and Gill were the Democratic members, and I think it was unanimously voted—no; it was not. There were two or three who did not vote. The entire committee recommended resolutions in favor of the contestee, but Messrs. Humphrey, Van Winkle, and Fulkerson did not agree that any of the ballots cast should be rejected, and Mr. Randell concurred only in the resolution. The report was concurred in and the resolutions adopted without debate.

In the committee report it says [reading]:

There is no law governing the preparation of ballots to be voted for Territorial delegates. The contestant was declared to have received 2,868 votes; and the other candidate, Notley, 2,289, and the contestee, 6,833.

There is no law of either Congress or the Territorial legislature prescribing the form of the ballots to be used in electing Territorial Delegates. Both parties to the contest have assumed that the Delegate should be elected according to the election laws of the Territory as far as they applied. Under the Hawaiian election law it was the duty of the secretary of state to have all the ballots printed and sent to the several voting precincts, to provide ballot boxes, and generally to provide the ways and means of holding elections. The secretary of state and election officers of Hawaii, having attempted to follow the election law in their choice of Delegate, with the apparent consent of the several candidates for that office, are bound by that law.

They should not be permitted to invoke it for one purpose and reject it for another. So far as it goes, it is definite and clear. It declares that the ballot shall bear no word, motto, device, sign, or symbol other than allowed therein, and shall be so printed that the type shall not show a trace on the back, and if a ballot contains a mark or symbol contrary to the provisions therein set forth it must be rejected, and otherwise carefully guards and protects the secrecy of the ballot. It has no provision for numbering the ballots, or implied authority, so far as your committee can discover.

Of course our election law has. [Reading:]

However, in the year 1903, the ballots prepared for the county election did contain numbers. Those were on the sides of and separated from the main parts of the ballots by perforated lines. This was done to avoid substitutions and perhaps other possibilities of fraud or irregularity, and, according to the evidence, they proved satisfactory and tended toward honest elections.

Just as ours have. The numbering and the perforated lines were just the same as the law required to be in Alaska. [Reading]:

In the preparation of the ballots for the election of 1904 the secretary of state adopted the same plan, so far as the numbering was concerned. Clear across the top of each ballot and separating it from its stub was a distinctly perforated line, and a number on such stub corresponded with the number on the upper right-hand corner of the ballot, separated from the balance of it by less distinctly perforated lines.

Just as our law provides for. [Reading:]

It was the intention that the ballots should be torn off from the stub on such large perforated line; but this, by mistake of the election officers, was not done in all instances.

Now, without going through the whole matter, the committee held that those ballots are void.

Mr. O'CONNOR. Was any substantial injury done to either one of the contestants?

Mr. WICKERSHAM. It was a violation of the law; that was all; only a violation of the statutes.

Mr. HUDSPETH. There was a perforated line where you tear the ballot, just like you tear a check from the stub?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. Now, on the stub is a number?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. That corresponds with the number on the ballot?

Mr. WICKERSHAM. No. There are two numbers on the top and two perforated squares, and those numbers correspond. Say it is No. 9 on the left-hand corner.

Mr. HUDSPETH. Of the stub?

Mr. WICKERSHAM. Yes. Now, they tear that off and keep it and give the ballot then to the voter, and he goes out and votes, and when he comes back they discover that when he turns his ballot in he has No. 9, so that he can not change his ballot.

Mr. HUDSPETH. How do you identify the ballot? It has No. 9 on it?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. It is the same system that we have in Texas, except that when you vote there your name is written on the poll list and your number placed opposite your name. Then that same name is writted across the back of your ballot.

Mr. WICKERSHAM. That is not done here. Both of these places are torn off under the Territorial act, and then when the ballot is put in the box there is no number on it.

Mr. CHINDBLOM. The corner is torn off when you get the ballot?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. The other piece with the number on is torn off when you return the ballot?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. Who keeps these two?

Mr. WICKERSHAM. They are destroyed.

Mr. CHINDBLOM. That is for the purpose of preventing the election commissioners from accepting a ballot which had previously been given to him?

Mr. HUDSPETH. I see your object.

Mr. CHINDBLOM. You are fortunate if you do not know of that system.

Mr. HUDSPETH. I did not know of it; but, as I stated, you could always go to the ballot box and to the poll list in a contested election and tell just how a man voted and whom he voted for.

Mr. CHINDBLOM. You are fortunate in not knowing of that system, as some of us have learned of it.

Mr. O'CONNOR. How can you tell how I voted if the two numbers are destroyed?

Mr. WICKERSHAM. You can not. But the point in this case is that the numbers were not destroyed in these ballots; and all you had to do was to run down the numbers, compare the poll list with the register list, take those ballots and run down, and tell how a man voted.

Mr. ELLIOTT. It is the duty of the election officers to tear those numbers off and put them in the box?

Mr. WICKERSHAM. Yes.

Mr. ELLIOTT. The voter has nothing to do with that?

Mr. WICKERSHAM. No.

Mr. ELLIOTT. And if they threw out any ballots on account of it we would be disfranchising the man on account of something he had no power over whatever?

Mr. WICKERSHAM. There is no question but what that is right. What are you going to do with your Australian ballot system then?

The CHAIRMAN. You are charging that this did not apply?

Mr. WICKERSHAM. I said that to begin with.

The CHAIRMAN. Are you not asking us to enforce a statute of the Territory that you have claimed all the while——

Mr. WICKERSHAM. Was invalid.

The CHAIRMAN. Was invalid?

Mr. WICKERSHAM. Yes. There is no question about that. But I said to you when I began—because I did not know what position you were going to take in the matter, you might take either position, might surprise me by saying that the Territorial act was valid. Mr. Grigsby claims that it is because it relates to these matters. I think he is wrong. We disagree. I am merely presenting the matter to you very briefly.

Mr. O'CONNOR. Do you think that this committee has a right to declare that act void?

Mr. WICKERSHAM. They did that in your other case. They did that thing in that case.

Mr. O'CONNOR. I am only asking the question to get your legal opinion.

Mr. WICKERSHAM. Mr. Grigsby takes the other view of it. He thinks that the Australian ballot system so far as the official ballot is concerned is valid, and says so in his opinion; thinks those precinct votes ought to be counted, because it is a fraud perpetrated by those officials; I do not think so.

Mr. HAYS. Your position is, primarily, that the law is void?

Mr. WICKERSHAM. Yes.

Mr. HAYS. And if it is void, then it makes no difference whether these are tallied or not?

Mr. WICKERSHAM. None whatever.

Mr. HAYS. On the other hand, if the law is to be declared valid, then you want it construed literally?

Mr. WICKERSHAM. Yes; that is all. Mr. Grigsby's opinion in the record is that it is valid, and if it is valid those votes, those precincts, have all got to go out under your Hawaiian case, because this is a much stronger case, because in the Hawaiian case the statute did not require it to be done as strongly as it has to be done in Alaska.

Now, so much for that. Now, we have a fresh breeze, fraud, and bribery at Copper Center precinct.

Mr. ELLIOTT. Is that worse than Charcoal Point?

Mr. WICKERSHAM. Yes. Copper Center is a precinct on the trail from Fairbanks out to the coast. In the spring of 1918 the United States marshal from Fairbanks, coming out over the trail, stopped for a time at Copper Center, as the evidence shows, and being a very ardent partisan he undertook to do something with the vote at Copper Center, and he found this, that the owner of the Copper Center properties—and this man owned substantially all of Copper Center real estate—had sold his hotel and leased the room where the post office was to a man by the name of Ditman, and he engaged to get Ditman appointed postmaster at that time, and was proposing himself to go out of the country temporarily, and he made an arrangement to have Ditman appointed postmaster.

The United States marshal came along and saw that situation and saw a good chance to do a little stroke of business, so he held that out, as the evidence shows, and said so to them; the agreement was finally, that if they would turn the vote of Copper Center over to—I am getting a little ahead of my story. There was a second man who wanted to be appointed postmaster. This second man resided out of town about a mile. He wanted to be appointed postmaster and take the post office out of Copper Center to his farm about a mile away from the town, and the Democratic national committee man had indorsed the other man, McCreary, out along the trail, the Republican owner of the property, and it was then that the postmaster became very much exercised because it was going to be a great injury to him personally, and take business out of the town, if that was done. So he finally, that night, entered into an arrangement with the United States marshal that if they would all turn in and support Mr. Sulzer in the primary election, which was then just to be held in a few days, that he, the marshal, who was then coming to Washington City, would have this man, Ditman, appointed postmaster in consideration of securing these votes for Mr. Sulzer at the primary and the fall election.

The marshal came on out to Cordova and there he saw Mr. Donohue, the Democratic national committeeman, and he sent this telegram back to Blix, the Republican owner of the buildings and post office there. [Reading:]

CORDOVA, April 22, 1918.

R. BLIX, Copper Center:

Saw Donohue; says Sulzer has never gotten any support to speak of at your place, but promised to make the change, provided you will get good vote for Sulzer at primary. Morrissey is going down on same boat with me. If you make good showing, change will be made.

L. T. ERWIN.

Erwin is the United States marshal. After he saw Donohue he telegraphed this back on April 22 to the proprietor. Well, of course, the proprietor was all right. That was what he wanted exactly.

He then came on to Washington and I will just read a little testimony, page 693, of the record. [Reading:]

Q. I withdraw that for a moment and will offer the witness a telegram dated May 2, 1918, addressed to Chas. A. Sulzer, House of Representatives, Washington, D. C., and is signed by R. Blix, postmaster, and I wish you would state if you sent that telegram to Mr. Sulzer at the date it bears.—A. Yes, sir.

Q. That was after the primary election had been held?—A. Yes, sir.

Q. What was the date of the primary election?—A. I don't know, sir; I can't quite recollect; it was April 30, I think.

Q. Two days before the telegram was sent?—A. About two or three days; shortly before anyway.

And then I offered the next telegram in evidence, which reads like this [reading]:

MAY 2, 1918.

CHARLES A. SULZER,

Care of House of Representatives, Washington, D. C.:

Primaries here gave you 17, Malony none, Wickersham 1. The consideration as promised by Donohue and Erwin, on April 22, McCrary's name to be withdrawn as postmaster here and that of Dittman recommended and that post office be kept where it is at present. On April 20 petition was circulated, signed by all patrons of post office, protesting against McCrary as postmaster and moving of office to his farm half mile north of here.

Petitions, plats, other papers was mailed to Erwin, care Department Justice. Upon his and Morrissy's arrival there they will fully explain matters. On receipt of this please call on First Assistant Postmaster General to defer issuing commission to McCrary till Erwin's arrival. As soon as matters has been settled in accordance to petition and wishes of the patrons of the post office here wire me fully the results.

R. BLIX, *Postmaster.*

Now, mind you, this was a Republican postmaster making all these arrangements, and he sent this telegram to Mr. Sulzer stating the agreement and the consideration.

MR. HUDSPETH. In that election you were not a candidate?

MR. WICKERSHAM. I was on the Republican ticket. But you will discover a little later that the consideration extended to the fall election as well. [Reading:]

Q. Did you receive any telegram from Marshal Erwin later than that?—A. I did.

Q. I show you a telegram dated Washington, D. C., May 14, 1918, signed "L. T. Erwin," and ask you if you received that telegram?—A. I did.

* * * * *

Q. Now, this telegram from Washington, D. C., dated May 13, signed by L. T. Erwin, was received subsequent to your sending this other one to Mr. Sulzer?—A. Yes, sir.

Q. And you received that telegram?—A. Judge Erwin sent me this in reply to the one I sent. I expected a reply to mine from Mr. Sulzer, but Mr. Erwin wired for him as well as for himself.

The next telegram is from page 708 of the record [reading]:

WASHINGTON, D. C., May 13-14, 1918.

R. BLIX, *Copper Center:*

Delegate Sulzer has arranged everything to the satisfaction of the patrons of post office. Dittman appointed as requested in petition. Let me beg you to show Sulzer your appreciation by doing as well for him in November as you did in April. Say nothing until Dittman gets his commission.

L. T. ERWIN.

Now, the author of that went on and testified very fully that this consideration was to cover the fall election as well as the spring election, and that it did cover the fall election, and that all of those people felt that they had to deliver the goods because they were under the control of the Democratic national committeeman and the United States marshal who was here in Washington with Mr. Sulzer; and by virtue of this agreement they did deliver all the votes there against me where I had had a big majority before in proportion to the population. At the fall election Connolly received no votes at all, Sulzer received 10, and I received none. Sulzer got every vote. Theretofore I had received a large number of votes.

Now, my theory about that matter is that the marshal came there and simply held them up, according to the testimony in this case, and insisted that if they did not deliver the votes in that case he and all the Democratic committeemen would move this post office out on McCrary's farm, and being coerced and intimidated by that method, they did agree with that proposition and it was carried out, and the men did deliver the goods; they gave this Republican postmaster what he had bargained for, and he got the post office upon that basis and I lost all the votes in the town although I had heretofore carried a very large majority. I do not know, of course, what you think of selling post offices to Republicans for votes, even for Mr. Sulzer, but there is no question about the evidence in this case. It was a deliberate holdup, a deliberate coercion, a deliberate intimidation of those people, and they had to do it for they were in the power of these two men. It was fraudulent, and if it was not bribery, it was the next thing to it. I think it was bribery.

Now, I have a decision here from McCrary. I am not going to read these decisions. Of course, the universal rule is that where the result of an election is obtained by bribery it is null and void; and if you pay them money to come in and vote, their votes go out because they are fraudulent, and if you pay in anything else it does not make any difference. It does not have to be money. If you hold them up and pay them with a Democratic office if they are Republicans, as these men were, it is bribery just the same.

McCrary on election, page 217, which we have right here says [reading]:

SEC. 217. The doctrine of the cases last cited, that a candidate for a public office can not lawfully attempt to influence votes by an offer of public benefits and advantages to be granted in the event of his election, is no longer open to question. Such a transaction amounts to a sale of the office to a candidate making the most favorable offer to the public. Such a practice, receiving judicial sanction, would undoubtedly tend, as was said by the Supreme Court of New Hampshire in *Tucker v. Aiken*, "to divert the attention of the electors from the qualifications of candidates to the terms on which they will consent to serve and make the choice turn upon considerations which ought not to have an influence."

Now, that is the authority, and it is perfectly clear from the evidence that the facts within this case come squarely within that authority, only it is a little bit stronger.

MR. CHINDBLOM. This authority—I am quite familiar with that line of cases—this authority relates to a case where a candidate for office promises, for instance, to turn his salary back to the county or the municipality or that he will take less compensation than the salary or that he will not accept some of the emoluments of the office.

Mr. WICKERSHAM. There is no doubt about that; it is the same principle, but this is a little bit worse. Here is a telegram from the marshal selling the office deliberately to a Republican for a few votes, and he delivered the goods. I must say that for him.

Mr. CHINDBLOM. They both delivered.

Mr. WICKERSHAM. They both delivered. I lost where I had always had a big majority in proportion to the population. That was the smallest vote ever cast there.

I want to talk to you now about illegal votes from Indian reservations. We have in southeastern Alaska two Indian reservations created by Executive order of the President of the United States; we have another Indian reservation where the Indians have lived from time immemorial, and their lands have been set apart to them; they live in the community as they always did live under their old tribal relations without any change from the first settlement of the country. They live in Juneau in the Indian village just as they always lived. Of course, the Indians are gradually assuming the habits of civilized life by wearing clothes. They can not get so much liquor, but they still live in the villages on lands reserved by statutes of the United States, especially in this one. In the other two places they live on places established by Executive orders of the President. I have offered these Executive orders in evidence, and they are before this committee.

I offer the first one for the creation of the Hydah Indian reservation. It is Executive order dated June 19, 1912, at the White House and is signed by William H. Taft, and it reads [reading]:

It is hereby ordered that the following land and water surfaces within the Tongass National Forest, surrounding the village of Hydaburg in Alaska, be, and the same are hereby, reserved, subject to any vested rights, for use of the Hydah Tribe of Indians and such of the natives of Alaska as may settle within the limits of the reservation, viz:

Beginning at a large rock situated at the line of high tide and a few feet north of the sawmill in the village Hydaburg on the west coast of Prince of Wales Island, at approximately 55 degrees 12 minutes north latitude and 132 degrees 48 minutes west longitude, and at a cross chiseled on said rock, and running thence east 140 chains to a point for the middle of the east boundary of the reservation; thence north 140 chains to a point for the northeast corner; thence west 279.60 chains on land and the water of Sukkwan Strait to a point for the northwest corner; thence south 280 chains on said strait and on land to a point for the southwest corner; thence east 280 chains on said strait and on land to a point for the southeast corner; thence north on the east boundary 140 chains to a point east of the place of beginning, including a tract 12.24 square miles (7,833.6 acres) with all islands and parts of islands within said boundary, as represented upon a diagram accompanying this order and made a part hereof.

WM. H. TAFT.

THE WHITE HOUSE, *June 19, 1912.*

Then follows the description of the outer boundaries of the reservation. To that is attached a map of the reservation designated "Reservation for the use of the Hydah Tribe of Indians and other natives of Alaska as may settle thereon. Total area 12.24 square miles, or 7,736.6 acres. Department of the Interior, Bureau of Education, P. P. Claxton, commissioner."

And on that is a map of the Prince of Wales and Sukkwan Island, and the reservation is marked out, and the town of Hydaburg is down there about the center of the reservation, and the Hydah Tribe of Indians live on that reservation, and on election day they went

over here to this place marked Sulzer and voted. Every one of them voted for Mr. Sulzer.

Mr. CHINDBLOM. How far away is Sulzer from Hydaburg?

Mr. WICKERSHAM. Twenty-three or twenty-five miles away, the way you have to go.

The CHAIRMAN. It is in the precinct, however?

Mr. WICKERSHAM. It is in the precinct.

The CHAIRMAN. Now, the town you refer to—I believe you said Hydaburg——

Mr. WICKERSHAM. Hydaburg, that is the village.

The CHAIRMAN. Is that a part of this reservation, and is that owned by the Indians personally?

Mr. WICKERSHAM. No; it is owned by the Government.

The CHAIRMAN. Do the Indians there erect their own houses?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. They build their own houses?

Mr. WICKERSHAM. Yes; the Government does not build them.

The CHAIRMAN. The Government has furnished nothing except the land?

Mr. WICKERSHAM. The Government has furnished the land, schools, and the school teachers and everybody who looks after it.

The CHAIRMAN. But they have done nothing toward the improvement of the reservation with reference to erecting buildings?

Mr. WICKERSHAM. The Government has public buildings and also schools. All that is in evidence.

The CHAIRMAN. One other thing. Are these houses built by the tribal Indians or by the individual who owns the houses?

Mr. WICKERSHAM. I suppose by the Indians. I have no doubt that is true.

Mr. CHINDBLOM. The houses in which the Indians live?

The CHAIRMAN. Yes.

Mr. WICKERSHAM. I suppose by the Indians themselves.

Now, the next one is the Klawak Indian Reservation, created by Executive order of Woodrow Wilson from the White House the 21st of April, 1914.

The CHAIRMAN. May I ask a question there?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Is that a correct copy of the original and that is introduced in evidence?

Mr. WICKERSHAM. Yes. They are in the brief.

Mr. HUDSPETH. Is your contention that they were not voters?

Mr. WICKERSHAM. Absolutely reservation tribal Indians.

Mr. HUDSPETH. Having no status as voters under the laws of the Alaska Territory?

Mr. WICKERSHAM. None whatever; nor anywhere else. The tribal Indian does not have the status anywhere so long as he remains with the tribe on the reservation.

Mr. ELLIOTT. What method would an Indian have to go through in order to become a resident of the United States.

Mr. WICKERSHAM. He would have to separate from the tribe and assume the habits of civilized life and live separate and apart from any tribe of Indians.

Mr. ELLIOTT. Would he have to be naturalized?

Mr. WICKERSHAM. That does naturalize him.

Let me call your attention to the Indian naturalization law of 1887, which naturalizes the Indians very easily, and very many have been naturalized under that law.

The CHAIRMAN. Your position is this, that as long as an Indian lives upon a reservation in a house or hut that he has built he is still retaining the tribal relation and can not vote?

Mr. WICKERSHAM. Yes, sir; without any other qualification but that. He may be wealthy, he may be as wealthy as John D. Rockefeller, and he may be as brilliant a man as Woodrow Wilson, but so long as he remains there a part of the tribe and lives on the tribal reservation as a member of the tribe, under the statutes he can not vote.

The CHAIRMAN. One other question. Living upon the reservation within the house that he has erected, can he separate himself from the tribe under these circumstances?

Mr. WICKERSHAM. Not without he leaves the reservation; no; because the land—on the reservation this is a small tract, usually only 12 acres, and it is not a large tract to be allotted, or anything of that kind. It is a small tract to bring these people together and hold them there for the control of the Bureau of Education, whose office is in charge.

Mr. CHINDBLOM. Is there a tribe on this reservation?

Mr. WICKERSHAM. Yes; there is.

Mr. CHINDBLOM. A tribe of Indians with a chief and a tribal form of government?

Mr. WICKERSHAM. Oh, no; not in that sense. They wear clothes like you and I do, and all that. They moved up there, two of the villages, just a little west of this place, moved up from those villages up to this one, about two years before this reservation was created and had the reservation created so as to protect them from the encroachments of the whites.

Mr. HUDSPETH. The Government did that?

Mr. WICKERSHAM. No; they did it themselves. They are all fishermen.

Mr. HUDSPETH. Does the Government feed them?

Mr. WICKERSHAM. No; they feed themselves.

The CHAIRMAN. You draw the line absolutely upon the place of his habitation?

Mr. WICKERSHAM. Not at all. I draw the line upon the facts which show that he is a member of a tribe.

The CHAIRMAN. Yes; as you answered my question a moment ago, if he remains on the reservation.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. That fact alone, as I understand you, makes him ineligible to vote?

Mr. WICKERSHAM. As long as he remains there as a member of the tribe; yes.

The CHAIRMAN. What do you mean "a member of the tribe"? That is the question I asked you a while ago, while remaining on the reservation, what is his tribal relation?

Mr. WICKERSHAM. As long as he remains there with the fellow members of the allied band, continues to live on this little reservation right in the little huddle of a little town; when they hold them-

selves out as a tribe, and are recognized by the President of the United States and all the officers of the United States as a tribe, then under the statutes they can not become citizens of the United States. To do that they must leave that form of life, they must leave their tribal relations and go separate and apart on lands and otherwise assume the habits of civilized life.

Mr. CHINDBLOM. I call your attention to the language of the Executive order of President Taft, namely, that the lands described are reserved, "subject to any vested rights, for use of the Hydah Tribe of Indians and such other natives of Alaska as may settle within the limits of the reservation."

Mr. WICKERSHAM. Yes, sir.

Mr. CHINDBLOM. That draws no distinction between the Hydah Tribe of Indians and other natives of Alaska that may settle there.

Mr. WICKERSHAM. If a Klawak should come and live with them, he can come and live with them, and he assumes the same relationship they do if he does that.

The CHAIRMAN. But does not this Executive order now, from its language, permit others than the Hydahs to settle on this reservation?

Mr. WICKERSHAM. Yes; as long as they are Indians.

The CHAIRMAN. And they may not necessarily be members of this tribe?

Mr. WICKERSHAM. They may not necessarily be members of this tribe, but if they settle there as Indians and assume the same tribal relations as those they assume the same legal status as those, or they continue in that same legal status.

Mr. CHINDBLOM. One further question: Does the record show that these Indians, who may not have been members of the Hydah Tribe, ever lived with the tribe?

Mr. WICKERSHAM. There is no showing in the record that they are not all Hydahs. The showing is that they are all Hydahs in this place, and in the other place all Klawaks except one. One was a Hydah who went over there. They are all Klawaks on the Klawak Reservation and all Hydahs on the Hydah Reservation.

Mr. CHINDBLOM. The record shows that?

Mr. WICKERSHAM. Yes; very clearly.

In the other order, dated April 22, 1914, signed by President Wilson, it is said [reading]:

EXECUTIVE ORDER NO. 1920.

It is hereby ordered that the tract of land in Alaska, described as follows, in and surrounding the native village of Klawak, and within the Tongass National Forest, be, and the same is hereby, reserved, subject to any vested rights existing, for the use of the United States Bureau of Education and of the natives of indigenous Alaskan race who may there reside, viz:

Description.—Beginning at a point on the shore of the salt bay or mouth of Klawak Stream, 114 links south of a post marked U. S. L. R. 1, which is a witness said point on shore and stands about 30 chains eastward from Klawak Village; thence northerly by a marked line 58.49 chains to a point on the shore of Klawak Harbor, which is 30 links north of a witness post marked U. S. L. R. 2; thence westerly along the shore, and then around the peninsula at the mean high-tide mark to point for corner No. 1, the place of beginning; situated approximately in latitude 55 degrees 33 minutes north, longitude 133 degrees 06 minutes west, and estimated to contain 230 acres; as represented upon a diagram accompanying this order and made a part thereof.

WOODROW WILSON.

THE WHITE HOUSE, April 21, 1914.

Now, you will notice that this is "the native village of Klawak."

The CHAIRMAN. Getting back to this other order—I want to get this clear in my mind—in this order I note this language:

And the same are hereby reserved, subject to any vested rights for use of the Hydah Tribe of Indians, and such of the natives of Alaska as may settle within the limits of the reservation.

Assuming that another native settles within this reservation who is not a member of this tribe, and is not a member of any other tribe, do you then claim that that fact that he resides on the reservation deprives him of the right to vote?

Mr. WICKERSHAM. That is purely an academic question because there is no evidence in the record to show that any other Indian does live there except Hydahs. The evidence shows that they are all Hydah Indians, and shows where they came from to this place. There is no question of that kind in the record. There is no question of that kind in relation to anyone except one man at the other place. One man is shown to have left the Hydah Reservation and married an Indian woman and settled on the Klawak Reservation.

The CHAIRMAN. As I recall the evidence there are, I think, two white men at Klawak.

Mr. WICKERSHAM. No; there were white men at Klawak who lived on the land before it was a reservation.

The CHAIRMAN. I may be mistaken.

Mr. WICKERSHAM. There are some men there, the minister at each one of these places, and the school-teacher, and probably other officials.

The CHAIRMAN. What I was calling attention to was the man who married Indians.

Mr. WICKERSHAM. Indian women?

The CHAIRMAN. Yes.

Mr. WICKERSHAM. They lived there before this was created an Indian reservation, but it was an old tribal village. They moved from the village of Howkan to Hydaburg so as to get away from the white people and get a government of their own. It was testified to by the officials then in charge that they wanted to get them away from the white men, to get where they could be under control on a small reservation, and where they could control them and send them to school and make them citizens. They are doing well with them. I am not raising any opposition to that.

Now, the Executive order of April 21 reads [reading]:

It is hereby ordered that the tract of land in Alaska, described as follows, in and surrounding the native village of Klawak, and within the Tongass National Forest, be, and the same is hereby, reserved, subject to any vested rights existing, for the use of the United States Bureau of Education and of the natives of indigenous Alaskan race who may there reside, viz.

And then follows, on the next page, a map and part of the order [reading]:

Klawak Reservation for the use of Klawak Indians, Alaska, embracing a tract of land in the Tongass National Forest approximately in latitude 55 degrees 33 minutes north, longitude 133 degrees 06 minutes west, as shown by shaded lines and designated "Klawak Reservation"; estimated area, 230 acres. Department of the Interior, Bureau of Education. P. P. Claxton, Commissioner.

This is a much larger reservation than the others.

Now, that shows the conditions surrounding those two places. There are two reservations made by the President of the United States by Executive order. He has the authority to do that, always has had. It is one of the usual methods of making reservations, and the reservations in Alaska have been created just that way. All of the military reservations, all of the reservations of every kind in Alaska, except the Annette Island Reservation, have been created in that way, except where, like the Auk village, the lands have been reserved by an act of Congress. There is no question about these being reservations and about these being Indian members, and the only question is, Have they the right to vote?

I want to call attention to the statutes in respect to these people. In the first place, an Indian can not make himself a citizen of the United States. He must be naturalized. That case was very fully discussed in *Elk v. Wilkins* (102 U. S., 94). The Supreme Court in that case said [reading]:

The alien and dependent condition of the members of the Indian tribes could not be put off at their will without the action or assent of the United States. They were never deemed citizens of the United States, except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe, or such numbers of it as chose to remain behind on the removal of the tribe westward, to be citizens, or authorizing the individuals of particular tribes to become—

In other words, the court there holds that an Indian was not able to make himself a citizen of the United States by anything he could do.

The CHAIRMAN. But since a statute——

MR. WICKERSHAM. I will call attention to that in a moment. At that time Elk was an educated man. He resided in Omaha, Nebr., and had assumed the habits of civilized life. He could read and write and do everything that you and I could do—probably not as well—everything that a civilized man can do. He tried to vote and they would not let him. Then he brought this suit and the court decided that he had no right to vote and that he must be naturalized just the same as if he was a citizen of Germany. He occupied exactly the position of an Italian who comes to this country and has no right to vote until he is made a naturalized citizen of the United States by law, and the same rule has to be followed with an Indian as with a German or Englishman or anybody else. He may be a wealthy man or a learned man, but he has got to go through just the same method of acquiring that citizenship as any person, as is prescribed by the Statute.

The court further said in that case [reading]:

But an Indian can not make himself a citizen of the United States without the consent and cooperation of the Government. The fact that he has abandoned his nomadic life or tribal relations, and adopted the habits and manners of civilized people, may be a good reason why he should be made a citizen of the United States, but does not of itself make him one. To be a citizen of the United States is a political privilege, which no one, not born to, can assume without its consent in some form.

And in the syllabi the court says [reading]:

An Indian, born a member of one of the tribes within the United States, which still exists and is recognized as a tribe by the Government of the United States, who has voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized, taxed or

recognized as a citizen, either by the United States or a State, is not a citizen of the United States, within the meaning of the first section of the fourteenth article of amendment of the Constitution.

And they turned him down.

Now, that set Congress to thinking, Mr. Chairman, and Congress then passed a law providing for the naturalization of Indians in a general way, and I now want to call your attention to the act of Congress of February, 1887, 24 Statutes at Large, at page 390. I have referred to it in my brief. I have copied in verbatim from the naturalization law of the act of 1887, and it reads like this [reading]:

SEC. 6. That upon the completion of said allotments and the patenting of the lands to the allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made, shall have the benefits of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indians to tribal or other property.

So that there are two ways by which an Indian can become a citizen of the United States: If he is a tribal Indian living on a reservation, and that reservation is allotted to the Indians, and he is given an allotment on the reservation, that of itself makes him a citizen of the United States without regard to whether he is otherwise capable or not. Just the mere fact that the Government has issued him the title makes him a citizen of the United States, and he can vote.

Mr. GRIGSBY. Is there not a proviso in that section that you did not read?

Mr. WICKERSHAM. I think not. What does it relate to, do you know?

Mr. GRIGSBY. That he will not give up any of his property.

Mr. CHINDBLOM. That is at the end.

Mr. WICKERSHAM. Yes. If he is allotted these lands, that makes him a citizen; and if not, then the only other way that he can become a citizen is the method pointed out here, that he has voluntarily taken up within such limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life. That will make him a citizen, but he must take up, separate and apart from any tribe of Indians therein, his residence, and adopt the habits of civilied life.

Now, he can not do that so long as he continues to live on a reservation as the member of a tribe. That is the point I want to make.

Mr. HAYS. You contend that these men have never acquired the right of franchise, first, because they still maintain the tribal relationship of the reservation?

Mr. WICKERSHAM. Yes.

Mr. HAYS. Secondly, because they have never been naturalized, and, third, because the other method——

Mr. WICKERSHAM. Has not taken place. There has been no allotment of land to them.

Mr. CHINDBLOM. Could there be an allotment of land to these Indians within any territory of their own?

Mr. WICKERSHAM. Well, no.

Mr. CHINDBLOM. Those were lands which were reserved for their use?

Mr. WICKERSHAM. Which were reserved by Executive order.

Mr. CHINDBLOM. By simply setting apart by the Government lands for the Indians to move upon, and for the department of education to conduct schools upon, but no land was given to the Indians?

Mr. WICKERSHAM. No.

Mr. CHINDBLOM. That has generally been done by treaty, has it not?

Mr. WICKERSHAM. That has generally been done by treaty under Indian legislation, very frequently by executive order, large tracts have been set apart and allotted to Indians. You see we do not make treaties, or have not been making treaties with the Indians since 1870. So if we have created any reservations since 1870 it has been by Executive order or by Congress. We have a reservation in the Annette Islands that was created by act of Congress. That had to be done because they were not Alaskan Indians.

Mr. CHINDBLOM. You think the Indians of the Hydah Tribe have any rights in the land which was reserved to them by the Executive order of President Taft?

Mr. WICKERSHAM. They can not have any right until the patent is given to them. No Indian has any right to land on a reservation until patent has been issued.

Mr. CHINDBLOM. Has the tribe any right to the lands? An allotment is simply dividing it among the members of the tribe, but has the tribe any right to the land?

Mr. WICKERSHAM. Yes; I think so. He has in the land in the Indian Territory, which was withdrawn by act for the benefit of the tribes specifically.

Mr. HAYS. Owned by the tribes in common.

Mr. WICKERSHAM. The word "owned" is rather too indefinite. It is occupied by them. It is a better phrase to use "occupied by them in common," and until the land is allotted to them they are not citizens of the United States, and until they leave tribal relations which they had assumed, where there are ancient villages in the community existing from time immemorial, until they went to this place and continued to live in tribal relations, because many of them had separate houses.

Mr. HUDSPETH. In the 1916 election was there in that election any illegal votes by Indians?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. What was the holding of the committee?

Mr. WICKERSHAM. The holding was that two of these men were shown to have adopted the habits of civilized life and Judge Wilson thought there were entitled to vote, but he gave little attention to the matter, it was pushed aside and was not substantially considered at all, except that he did do that. There was no question that they were all that time. I assume that some of these people on both of the reservations are competent men.

Mr. HUDSPETH. Qualified voters?

Mr. WICKERSHAM. They would be otherwise, but they are just the same as a German or Englishman who is not naturalized. They would be qualified voters if naturalized. It is a legal status that they are not in, and not because of their education or their personal qualifications.

Mr. HUDSPETH. Under this last act, it is not a question of naturalization, but it is a question of whether they own these lands to a sufficient extent in the treaty that would make them citizens.

Mr. WICKERSHAM. No; they must not own them in common, must own them separately.

Mr. HUDSPETH. In fee.

Mr. WICKERSHAM. Separately. They are given lands in fee separately and a patent, then they become citizens of the United States.

Mr. CHINDBLOM. Now, the Alaska Indians, I presume it will be admitted, are situated differently, quite differently from the Indians down here in the Territories. The Alaska Indians have not existed as tribes in the way that the Indians have on the plains down here.

Mr. WICKERSHAM. Oh, yes; just the same.

Mr. CHINDBLOM. I have been informed otherwise.

Mr. WICKERSHAM. You are mistaken if you have been. The whole of the interior of Alaska is occupied by the Athabaskan Tribe of Indians. The Athabaskan stock occupies the whole of the interior of Alaska. Those people at an early date migrated from Oregon. They are the same as the Iroquois, and have the same identical language, while these tribes nowadays are divided into Thlinkets, Hydahs, and Tsimpseans, and they are just as distinct as Germans, Frenchmen, and Englishmen.

Mr. CHINDBLOM. We had a matter up before the Committee on the Merchant Marine and Fisheries which involved the procuring of food for the Indians on the reservations in Alaska, and the status of these Alaskan Indians was brought out.

Mr. WICKERSHAM. Well, it has been decided by the courts up there that there is nothing left to be talked about. It has been decided by the highest court in Alaska, the ninth circuit of the United States.

Mr. CHINDBLOM. I would like to have some of those decisions.

The CHAIRMAN. Has he cited those?

Mr. WICKERSHAM. Yes; all of them.

The CHAIRMAN. In your brief?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. How would you determine whether an Indian had adopted the habits of civilized life?

Mr. WICKERSHAM. That is a matter of evidence in each case.

The CHAIRMAN. Does the court in these decisions draw a distinct line between the Indian who has not adopted civilized life and the one who has?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. It is a question of fact.

Mr. WICKERSHAM. It is a question of fact in each individual case. Each individual Indian stands alone under the facts and the law.

The CHAIRMAN. Under the facts and the law?

Mr. WICKERSHAM. That he must separate from the tribe and have adopted the habits of civilized life.

Mr. O'CONNOR. Does he have to separate himself and adopt the habits of civilized life, or adopt the habits of civilized life?

The CHAIRMAN. Your position is, however, that he must adopt the habits of civilized life; but if he remains on the reservation he has not complied with the law?

Mr. WICKERSHAM. Certainly not. But if he remains on the reservation and the reservation is allotted, and he gets an allotment, he becomes a citizen whether he has adopted the habits of civilized life or not.

The CHAIRMAN. But do the decisions go to that extent?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. I wish you would give the reporter the reference.

Mr. WICKERSHAM. I would rather call them to your attention. The first case I am going to call to your attention is *Fair v. Frazier* (28 Nebraska, p. 483).

Mr. CHINDBLOM. What tribe of Indians is involved?

Mr. WICKERSHAM. Winnebagoes and Omahas.

Mr. CHINDBLOM. Of course, they have a perfectly established status as Indian tribes?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. They had tribal government?

Mr. WICKERSHAM. So have these others.

Now, the Government of the United States has published a large number of books and, of course, there is a book about that particular matter. You have it right in your library in there showing the division of all these Indians in the United States into tribes. You will find the Klawaks and the Semshans and the Hydah bands all mentioned in there. Now, in this case of *Fair v. Frazier*, there was an election held near the Omaha Reservation in Dakota County, and there were some Indians from the reservation voting at the election; a contested-election case was raised over it and the point in the case turned upon the fact that these Indians from this reservation had not had patents issued to them, and they therefore being reservation Indians and not having received their patent and allotment they were not entitled to vote, and the court held that that was correct and stated this doctrine that I have been stating to you. The court says:

There was a large amount of evidence taken and reported by the referee, chiefly directed to the inquiry as to whether these Indians had or had not abolished their tribal relations with each other and adopted the habits of civilized life. This testimony is utterly irrelevant except upon the theory that it was claimed by the respondent that these Indians were citizens and hence voters under the second clause of the sixth section of the act of February 8, 1887, popularly known as the Dawes bill, and if so, it were only necessary to show that said Indians continued to live together on an Indian reservation and that the individual Indian has not "taken up * * * his separate residence separate and apart from any tribe of Indians." As to the other Indians, it is the allotment to them of lands in severalty by the General Government which alone is claimed to make them citizens, and no amount of education, civilization, or cultivation, without such allotment can do so.

There is a decision upon this point by the Supreme Court of Nebraska, holding that if they are on the Indian reservation and they have not received any allotment it does not make any difference whether they have adopted the habits of civilized life or not. They can not vote.

Mr. O'CONNOR. Was that decision after the act was passed and based on the act?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. I presume the theory is that as long as they have the land in common and live together as one large family they have their own government and retain their national unity. Where land has been allotted to them separately, then they no longer constitute a tribe.

Mr. HUDSPETH. You take the tribe in New Mexico, they have a government of their own, their own law.

Mr. WICKERSHAM. There was another case in Nebraska following this case of the twenty-eighth Nebraska. It is in the thirty-seventh Nebraska and begins at page 299.

The CHAIRMAN. Is this section that has been quoted with reference to the Indians what is referred to as the Dawes bill?

Mr. WICKERSHAM. Yes; it is the sixth section of this bill.

Now, in this second case, Mr. Chairman, there was another election, either two or four years subsequently to the one you are considering there, and another contested election arose from it, and it was between the two judges in that district—Judge Crawford and Judge Norris. Norris is now United States Senator. This same question arose with respect to these very same Indians that you are reading about there; but, in this case, however, in the meantime, the patents had issued and Judge Norris was elected if these Indians were legal voters, and he was defeated if they were not legal voters. So Crawford brought suit against Judge Norris to determine the question as to which one was elected. In the meantime the Indians had received their patents for the Winnebago and Omaha lands, and the court held that having received their patents they were then entitled to vote. So that we have the two cases under this act.

The CHAIRMAN. The opinion is based on the naked fact of their having obtained patents?

Mr. WICKERSHAM. Yes, sir; and it was held specifically that, although those people may have had all the necessary qualifications of citizenship, so long as they continued to remain as tribal Indians on tribal reservations, they were not entitled to vote. That was the point of the case. It was decided by the highest court in the country and is law.

Mr. GRIGSBY. That was in the State of Nebraska?

Mr. WICKERSHAM. Yes, sir.

Mr. GRIGSBY. The Indian reservation was not a part of the State?

Mr. WICKERSHAM. You are testifying now.

Mr. GRIGSBY. I am asking you.

Mr. WICKERSHAM. In this case of *Crawford v. Norris*, page 308, the court says:

An Indian to whom an allotment has been made under this act, and who possesses the other qualifications required by the constitution and laws of this State, is *prima facie* a voter. But the evidence in this record shows, as before stated, that at the election held November 3, 1891, these Winnebago Indians who voted at such election had severed their tribal relations, voluntarily taken up their residences separate and apart from their tribes and had adopted the habits of civilized life, and this brought them within the last clause of section 6 of the aforesaid act of Congress.

An analysis of the "Dawes bill" discloses that it prescribes a rule of naturalization only for Indians born within the territorial limits of the United States and for each of those, (1) to whom lands have been allotted in severalty, and (2) such as have voluntarily taken up their residence in the United States separate and apart from any tribe of Indians therein and adopted the habits of civilized life.

So that those questions are all settled in these two cases, and settled specifically and positively. This matter has gone from the Territory of Alaska to the Circuit Court of Appeals, Ninth Circuit, on appeal from Judge Jennings's opinion in Juneau. A man was arrested for selling liquor to an Indian, and when the case came up he contended that the man was not an Indian, and the Indian was brought on, and he said, yes, he was born an Indian, his father and mother were both Indians; and they asked him where he lived. He lived somewhere by himself, and he wore store clothes, and he talked English, and he could read and write, and do all the things that an ordinary citizen could do. Judge Jennings held he was not an Indian, but the court of appeals of the ninth circuit reversed it, and the court based its opinion entirely upon these cases which I have just read, and this is the case of—what is that case?

Mr. GRIGSBY. I do not remember.

Mr. CHINDBLOM. *Nagle v. United States*, 191 Federal, 141.

Mr. GRIGSBY. What is the date?

Mr. WICKERSHAM. Dated October 2, 1911.

Mr. GRIGSBY. That is before Jennings was on the bench.

Mr. WICKERSHAM. I do not know but what you are right about that. It was decided there by the judge, whoever he was. That case was reversed in the ninth circuit. I gave some assistance in the preparation of the brief in this case and in that case.

Paragraph 2 of the syllabi reads:

The provisions of act of February 8, 1887 (ch. 119, sec. 6, 24 Stat., 390), relating to allotments of lands to Indians in severalty, that "every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein and has adopted the habits of civilized life is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizen," is in effect in Alaska, and operates to make Indians therein, who are descendants of the aboriginal tribes, born since the annexation of Alaska, but who have voluntarily taken up their residence separate and apart from any tribe and adopted the habits of civilization, citizens of the United States, and the sale of liquor to such an Indian does not constitute an offense under Alaska Code (Cr. Proc., sec. 142), as amended by act February 6, 1909 (ch. 80, sec. 9, 35 Stat., 603), making it an offense to sell liquor to an "Indian," which term is defined to include the aboriginal races inhabiting Alaska when annexed to the United States and their descendants of the whole or half blood "who have not become citizens of the United States."

The CHAIRMAN. In other words, the court held there, as you contend, that after he has separated from the tribe and adopted habits of civilized life he is no longer an Indian?

Mr. WICKERSHAM. No, sir; he is a citizen of the United States, although he may be of Indian blood.

The CHAIRMAN. What page is that?

Mr. WICKERSHAM. One hundred and forty-one; the syllabi is on page 141.

The CHAIRMAN. You read from the syllabi?

Mr. WICKERSHAM. Yes.

Mr. HAYS. Judge Wickersham, that makes three, and only three, ways by which citizenship is granted?

Mr. WICKERSHAM. Yes, sir.

Mr. HAYS. One is by naturalization, one is by allotment, and the other is by a physical separation from the tribe and adoption of civilized habits?

Mr. WICKERSHAM. Yes, sir.

Mr. CHINDBLOM. There are really only two. There is not the third, the usual method of naturalization. Mr. Wickersham is speaking in a general way. There may be naturalization by an act of Congress. Some tribes of Indians are made citizens by special acts of Congress.

Mr. GRIGSBY. May I ask a question?

The CHAIRMAN. Certainly.

Mr. GRIGSBY. With regard to the Indians from Hydaburg that were refused a vote in 1916, and the committee allowed in the 1916 contest, did they not allege that the Hydaburg Indians lived with the rest of the Indians at Klawak?

Mr. WICKERSHAM. They testified that they were living separate and apart, and they were separate and apart.

Mr. GRIGSBY. Didn't they all testify to that?

Mr. WICKERSHAM. No.

Mr. GRIGSBY. No distinction about that?

Mr. WICKERSHAM. Only two were allowed.

Mr. GRIGSBY. There were not more than two?

Mr. WICKERSHAM. No, sir.

Mr. GRIGSBY. I wanted to know the gentleman's opinion.

Mr. WICKERSHAM. You know my opinion.

Mr. GRIGSBY. Excuse me, I know your purpose. I do not know your position.

Mr. WICKERSHAM. The matter was slurred over in the former opinion, but so far as Judge Wilson decided it he decided that those two Indians were entitled to vote, but put in on the ground substantially that they had adopted the habits of civilization, and he did not pay any attention to the fact that they were not on the Indian reservation, and in that case we were discussing the rights of the people upon the other point—that they had adopted the habits of civilized life and not that they were on the reservation. I have not raised that point in this case. I have only raised in this case the fact that they live on an Indian reservation, and that substantially admits that they are all qualified if they are not barred by living on an Indian reservation.

Mr. GRIGSBY. That was exactly what I wanted to know—your position.

Mr. WICKERSHAM. My position is that. I have only made the one point against them, and that is that they live on a reservation in tribal relations. That is the only point I have made against them. Some of those fellows may be all right and are very agreeable fellows; and most of these Indians are a superior lot of men; they are fishermen, and they will make good citizens and become citizens of the United States.

Mr. O'CONNOR. Does the reservation tend to make them good citizens?

Mr. WICKERSHAM. Not until it fixes their civil status. A gentleman from Germany or from France or from England may be as good a man in every way as you and I, but his civil status is fixed by the law of the country. Our law fixes the civil status of these people without regard to their mental status or mental culture.

So that has nothing to do with it, and I have not raised that question. I am not saying to this committee there are not men on both of these reservations who are bright, industrious, and can read and

write and wear store clothes and all that sort of thing. I am not saying that. That question was raised by Mr. Grigsby at Ketchikan and other places; and just as the court says, in this Nebraska case, a vast amount of testimony was taken that was irrelevant and had nothing whatever to do with this case. I have not tried to do that, and, with reference to those men on that reservation, I do not raise that question.

I want to call the committee's attention to the case of *Davis v. Sitka School Board* (3 Alaska, 481-485), which is a case decided by Judge Gunnison, at Juneau, and I can probably just as well get at it by telling you the facts. The facts are that a native, an Indian, residing at Sitka, was the guardian of a couple of children. They belonged to the Presbyterian Church. He run a store, just one of these men claims to run a store. He wore store clothes and had a cash register and some kind of a music box, and to all outward appearances was an ordinary citizen of the United States.

But he was an Indian and these children were Indians. He wanted to send them to the school for the whites and we had a law passed by Congress dividing these children in Alaska into different schools, and the Indians go to one school and the whites go to another school, just as you have in most of the southern States, one school for colored children and another school for white children. And those Indians insisted on going to the white school, and they would not allow them to go. He brought suit to compel the officers of the school board to let his children go to that school. The matter came before the court and the court held they were not entitled to go to the school. He held that Congress, having provided the other school, that they were Indians and must go to the other school. The syllabi in this case very vitally states the case. [Reading:]

Dora and Tillie Davis are the children of Fred Davis, deceased, who was a full-blood Sitka Indian, and his wife, who was of mixed white and Indian blood. Their parents were legally married on December 14, 1896, and both children were born in lawful wedlock and are of mixed blood. After the death of their father their mother married Rudolph Walton, a full-blood Sitka Indian, who is the guardian ad litem of the children in this case. Walton owns a house in the native village lying on the outskirts of the town of Sitka.

And I call your attention to the fact it has the same relation to the town of Sitka that Auk village does to Juneau, but we will get to that later.

The children live there with their mother and stepfather. Walton conducts a store on the edge of the town of Sitka, in which he manufactures and sells Indian curios, and he pays a license as a merchant under the laws of Alaska. He rents a box in the post office, and worked out his road tax in the Sitka road district, when warned out by the overseer. He and his family have adopted the white man's style of dress. He is an industrious, law-abiding, intelligent native. He conducts his business according to civilized methods, even to the installation of an expensive cash register in his store. He speaks, reads, and writes the English language. The Waltons are members of the Presbyterian church. What is the manner of their life, their domestic habits, and who are their associates and intimates does not appear in the evidence. Held, that, while the Davis children are of "mixed blood" they do not "lead a civilized life," within the meaning of section 7 of the act of Congress of January 27, 1905 (33 Stat. 617, c. 277), so as to entitle them to attend the public schools maintained for "white children and children of mixed blood who live a civilized life." Held that mandamus will not lie to compel the school board of Sitka to admit such children to the public schools therein: it appearing that the Government maintained a separate school for Eskimos and Indians under the direction and control of the Secretary of the Interior.

The CHAIRMAN. Does the court in the text there set out the reason?

Mr. WICKERSHAM. Yes, sir: I have just been reading to you the reason.

The CHAIRMAN. You were reading that from the syllabi.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Does the court set it out?

Mr. WICKERSHAM. Very fully. He first starts off by citing the law and the other decisions of the courts of Alaska in relation to this matter, and then he takes up the case very fully. He goes into the question as to whether these people are civilized—had abandoned their tribal relations, in other words. They had not. They lived there in the Indian village on the Indian grounds in the old community village, surrounded by all the other Indians, and he held they had to get away from there and otherwise to live separate and apart from the tribe of Indians and to adopt the habits of civilized life: otherwise, they were not entitled to send their children to the white school. That case is exactly in point in the matter.

Now, we have had several cases decided there——

Mr. CHINDBLOM. Just a moment. I think it is only fair to call attention to some language on page 485 of this Third Alaska, where the court cites an earlier case, *In re Sah Quah* (D. C.) 31 Fed., 329, in which the status of the Alaskan Indian was considered, and Judge said as follows [reading]:

The United States has at no time recognized any tribal independence or relations among these Indians (Alaskan), has never treated with them in any capacity, but from every act of Congress in relation to the people of this Territory it is clearly inferable that they have been and now are regarded as dependent subjects, amenable to the penal laws of the United States and subject to the jurisdiction of its courts. They are practically in a state of pupilage, and sustain a relation to the United States similar to that of a ward to a guardian.

So much for the quotation. That sustains to some extent, I think, my remark some time ago that in Alaska the question of the tribal relation is not definitely established, and they are wards of the Government, pupils of the Government, and they must be protected by the Government, and all that. And this question of the tribal relation I do not think is clearly established in Alaska, as the Judge seems to argue.

Mr. WICKERSHAM. It is established when they go on the reservation and live there as a tribe under the Executive order of the President of the United States permitting a certain tribe to go there and live there.

Mr. CHINDBLOM. That Executive order, if you will observe, was issued at the request and at the instance of the department of education.

Mr. WICKERSHAM. I know: it has charge of them.

Mr. CHINDBLOM. The department of education requested it for the purpose of taking care of these wards of the Government.

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. And I say they are not in the same relation to the United States as were the tribes with whom we dealt as tribes, or as nations.

Mr. WICKERSHAM. No. And we have not dealt with the Indians, of course, since 1870. Now, Mr. Chairman, there are a lot of other

decisions along this line and they all go to the same point; they all go to the same identical point. All of our courts have decided these matters; have decided every phase in this case. I did not refer to the case which is in second Alaska——

Mr. CHINDBLOM. Permit me to add, Judge, that I do not pretend to express any opinion with reference to the merits of your argument; but this matter came to my attention in another hearing, and I therefore had some information about it.

Mr. WICKERSHAM. I will tell you, Mr. Chindblom, I have long since learned I do not know all of the law.

Mr. CHINDBLOM. I certainly do not pretend to.

Mr. WICKERSHAM. And I could not tell it all, if I did know it all, in so short a time as you gentlemen insist upon my doing it. I do know this, Mr. Chairman: I was a judge in Alaska for some years myself; I served on the bench for eight years, and I have always taken a great interest in the matter of ethnology and the study of the Indian tribes and migration and all that, and have given a great deal of thought to that particular branch of the science. And in May, 1904, I had occasion to pass on the application for naturalization of a man by the name of John Minook, who came before me at Rampart, away up in the interior part of Alaska, and sought to be naturalized. John Minook was the son of a Russian father and his mother was an Eskimo, neither of the whole blood—I do not remember whether of the full blood or half blood; but, anyway, he was the son of this Russian father and Eskimo mother. The matter was argued and I refused to grant naturalization, because I had already held he was a citizen of the United States under the treaty of 1867, by which we purchased Alaska. In that treaty we agreed all those inhabitants of Russian descent, who remained in that country for three years after the purchase, under the treaty on March 30, 1867, should become citizens of the United States, with all rights, privileges, and immunities of any other citizen.

And I held he was a subject of Russia at the time; being the son of a trader there and having remained three years, that he became, by virtue of that treaty, a naturalized citizen of the United States and did not need to get any further action on the part of the court. And in doing that, Mr. Chairman, I looked into this matter in very great detail, and I took up this act of 1887 and gave full effect to that. But I did more; I discovered that in the Ukase of the Czar in 1844, the laws of Alaska, the original laws of Alaska, which covered citizenship, had established the citizenship status of all their people in Alaska. And you would be amazed, if you read this case, to find what a wonderful interesting system of laws the Russians had in Alaska under this charter. For instance, in this charter there is a section, an article, relating to cononial civilians:

Russian subjects and persons of free station, having the right to leave America, who have voluntarily settled in that country, shall form a distinct class of society, etc.

Russian commoners and peasants, temporarily resident in the American colonies, voluntarily in the service of the company, married to creole or native American women, and who on account of sickness, old age, or long residence, and by having become acclimatized and accustomed to the mode of life of the country, or who, during long absence from Russia, have lost their near relatives, upon expressing to the company their desire to settle permanently in the country and handing in a written request for permission so to do, shall be

assigned to settle on the Kenai shore of America, or in such other localities as the governor may consider most opportune—provided that they be within the Russian possessions and it shall be the duty of the company to erect for such colonists suitable dwellings; to furnish them with implements necessary for hunting and agriculture, together with domestic animals, cattle, fowls, and grain for sowing; to provide them with food supplies for one year; and to guard against the possibility of their suffering future privations.

SEC. 229. Such persons shall be excluded from the class to which they belonged in Russia, after the company shall have communicated with the authorities charged with such matters.

SEC. 230. They shall be permitted to pursue their previous callings, and the said authorities shall demand from the company, on their account, a poll tax only, waiving all other assessments to which they were previously liable; such poll tax to be levied in accordance with the list of these persons furnished by the administration of the company.

SEC. 231. The names of commoners and peasants so assigned to settlements shall be forwarded annually, through the chief administrative office, with its other reports, to the minister of finance.

SEC. 232. The children of such settlers shall be regarded as creoles, and may enter the company's employ, if they so desire, at the established rates of remuneration.

SEC. 233. They shall be permitted to dispose of such superfluous commodities as they may accumulate, at prices arranged by agreement with the purchaser; except in the case of furs and animal goods, which shall be sold only at the established rates.

SEC. 234. There shall be no restrictions against the colonial civilians taking service with the company under contract, if the consent of the colonial administration be obtained thereto.

SEC. 235. In the allotment of ground to colonial civilians, the company shall particularly bear in mind that the natives are not to be embarrassed, and that the colonial civilians are to support themselves by their own labor.

ARTICLE 3.

OF THE CREOLES.

SEC. 236. Children born of a European or Siberian father and a native American mother, or of a native American father and a European or Siberian mother, shall be regarded as creoles, equally with the children of these latter, of whom a special record is preserved.

SEC. 237. The creoles are Russian subjects, and, as such, shall have a right to the lawful protection of the Government equally with all other subjects belonging to the rank of commoners.

Then in article 4:

The settled tribes in the colonies include the inhabitants of the Kuril Islands, the Aleutian Islands, Kadiak, and the adjacent islands, and the Alaska Peninsula; as also, the natives living on the shores of America, such as the Kenai natives, the Chugach, etc.

SEC. 248. The settled tribes professing the Christian belief are not designated by any special name; those professing the native faith shall be styled, for the purpose of discrimination, "settled tribes of other religions."

SEC. 249. These people are recognized by the Government—equally with all the others—as Russian subjects.

I will not go further into that, but I am calling this matter to your attention because some question is made that some of these people at Afognak are not legal voters. The depositions were taken of some of them by Mr. Grigsby's agents and attorneys and they are mentioned. Now they were all Russian creoles. They were all descendants of Russians, belonging to the Russian Church, and they have always lived at Afognak from the time of their birth down to the present time.

The CHAIRMAN. Some of those were born in British Columbia, were they not?

Mr. WICKERSHAM. None of those in Afognak, oh no. There were one or two down in Ketchikan.

The CHAIRMAN. Those, of course, were not citizens?

Mr. WICKERSHAM. Those, of course, were not entirely, except if they were naturalized. And this was up along the coast of Alaska, out toward the Aleutian Islands and all those who were Russian citizens under the laws of Russia prior to the sale of the country to us we agreed, by the treaty, to make them citizens of the United States.

The CHAIRMAN. They were natives of Alaska, however?

Mr. WICKERSHAM. They were natives of Alaska, born in Alaska to creoles, and were entitled, of course——

The CHAIRMAN. And by "creole" you mean either the father or mother was of Russian blood?

Mr. WICKERSHAM. Of Siberian or Russian blood.

Mr. O'CONNOR. Does that Ukase use the Russian word "creole": was that adopted into the Russian language?

Mr. WICKERSHAM. It uses the Russian word which means that.

Mr. O'CONNOR. I thought probably it had been adopted by the Russians.

Mr. WICKERSHAM. It uses the Russian word which means "creole." I can not take that up. My time is running out.

I only want to talk to you about the Auk Indian village at Juneau. The evidence in this case shows just outside of the town of Juneau is the Auk Indian village. I have here the United States Government map showing the location of the Auk Indian village and a survey of the lands upon which the Auk Indian village stands.

The CHAIRMAN. And that is under an order of the President?

Mr. WICKERSHAM. That is the third reservation. These Indians have lived at this place since the first settlements of the country. The Auk Indian village was there when the country was first settled and it has continued to be there from that day to this. The evidence of Mr. Valentine is very full and complete in the record and shows the whole situation. He is one of the old settlers in the country.

And then I have here the common histories of that country, all of which describe and locate the Auk Indian village as being there before the white people came there. There is no question about that. The Auk Indian village is reserved by the act of Congress of 1884 and subsequent acts of Congress. It provided that lands within the possession and occupation of the Indian tribes shall not be taken out of their possession by any person or intruded upon in any way. Now, Congress and the land departments have held time and time again, and therefore those decisions are all cited in my brief, that their possession can not be intruded upon nor ousted as long as they live in that way.

The CHAIRMAN. How large a tract was reserved there by Congress?

Mr. WICKERSHAM. It is on the tide lands very largely. Those Indians built right along the beach, but they have some land in a town back from the beach. Most of it, though, is along the beach or along a road they have built themselves a long time ago, how long nobody knows. We have the whole story, though, in the testimony in this case by Valentine, and photographs, etc.

There is a similar place over at Douglas. And these Indians are recognized in all of the authorities as being a tribe separate and

apart from other tribes, as the Auk Tribe, and known as the Auk Indians. And they have lived there from time immemorial and continue now to live on their old village community site in a community of Indians, a tribe by themselves.

And yet on election day, for the first time in this election of November 5, 1918, the United States district attorney at Juneau, at the request, I suppose, of the governor, issued a sort of affidavit which he sent out amongst the Indians. Mr. Reagan here said he carried some of them out, and they were carried around to those Indians on election day; the Indians took them up to the polls; at first they were rejected and they would not let them vote. And Mr. Reagan, for the district attorney, went over to the polls at Douglas and made some sort of a representation to the officers over there, so that they gave up their right to be the judge and permitted these natives to make this affidavit, which is not a challenge oath at all, and to vote in the election at Douglas. And the same thing was done at Juneau.

The CHAIRMAN. But it is an affidavit he has severed his tribal relations and adopted the white man's laws?

Mr. WICKERSHAM. Yes; but it is a false oath, and was false, as those men knew when they had the affidavits made, because they knew where the Indians lived and live now—that they lived in the community Indian village. They knew they lived there as a tribe and had not severed their tribal relations, and they knew, when they got these Indians to subscribe to these oaths, those oaths were false. And that is all in the record. They got 28 or 30 of those Indians to vote in that way from this reservation, which is reserved to them by act of Congress, where they have lived in that community from time immemorial, and where they are now living, just as they always did live. So that I say that those votes ought to be thrown out. I am sorry I do not have time to go into it more fully, because it is a very important matter.

Mr. HUDSPETH. How much more time do you think you need?

Mr. WICKERSHAM. Half an hour or so.

The CHAIRMAN. You have three-quarters of an hour.

Mr. WICKERSHAM. I want to call your attention, then, that the Auk Indians at those places had never voted before, until this election on November 5, 1918, except one of them by the name of Kunz. Kunz had taken out naturalization papers. The Territory of Alaska, some years ago, passed a law providing that Indians in Alaska, upon making a certain showing, might have a certificate by the judge of the United States district court showing they had severed their tribal relations and adopted the habits of civilized life and were citizens of the United States.

Mr. CHINDBLOM. The Legislature of Alaska passed that law?

Mr. WICKERSHAM. The Legislature of Alaska passed that law, and about 20 of the natives have been allowed to come before the United States district court and have been given that certificate. As to those, we have not made any serious question. Only one or two of them voted. We take the same view you do about that. None of those other Indians had done that. If they had all done that, I probably would not have said anything about it; I would have let it go, although they live on the Auk Indian Reservation and not a single question can be raised but what they are Auk Indians and live there in

the community as Auk Indians, all in a little huddle along this plank walk, with their houses side by side and all huddled up side by side, just as they have for hundreds of years.

Here is what Mr. Smizer gave you, page 189 of the record. I think I will turn to that and just read it—the statement he sent out to them, the affidavit he sent out for their benefit by Mr. Reagan and others [reading]:

UNITED STATES OF AMERICA,

District of Alaska, Precinct of Douglas, ss:

I, the undersigned, being first duly sworn, do on oath depose and say: I am an Indian, born within the territorial limits of the United States; I have voluntarily taken up within said limits my residence, separate and apart from any tribe of Indians herein, and I have adopted the habits of civilized life; and I am a citizen of the United States and entitled to all the rights, privileges, and immunities of such citizens; and I claim the right to vote at the election holden in the Territory of Alaska on November 5, 1918, for the election of a Delegate from said Alaska to the Congress of the United States and other officers. I claim my citizenship rights under the provisions of the act of Congress of the United States, approved February 8, 1887, and claim the right to swear my vote in if challenged, as per section 401 of Compiled Laws of Alaska, at page 265, and ask the judges of election to read said section.

Subscribed and sworn to before me, this 5th day of November, 1918.

To the judges of election:

I have been asked for an opinion as to the right of the Indians to vote. I will state that Indians who have severed their tribal relations, and live separate and apart from any tribe of Indians, and have adopted the habits of civilized life, are citizens of the United States and are entitled to vote the same as white citizens. This under the act of Congress approved February 8, 1887, section 6 thereof.

The territorial act of 1915 is merely one form of prima facie evidence of the Indian's right to vote, and is not exclusive of other forms of proof. It is my opinion that any Indian who makes the above affidavit is prima facie entitled to vote.

JAMES A. SMISER,
United States Attorney.

JUNEAU, November 5, 1918.

The evidence shows that Mr. Reagan here carried those things around to the polling places and distributed them, and that Seward Kunz, an Indian who is an interpreter there at the courts, carried it around to other places, and then they prevailed upon the election officers to allow the Indians to vote upon making that affidavit.

The CHAIRMAN. Did not the election officers, when they challenged them, require them to sign the ordinary challenge oath?

Mr. WICKERSHAM. No; because they had lived in the Territory a year and in the precinct for 30 days. There was no question about that. All they required them to do was to take that oath, and you will find all those oaths are in the returns, so I am informed.

The CHAIRMAN. But the affidavit also required them to be citizens of the United States?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. That was one of the requirements in the challenge oath?

Mr. WICKERSHAM. Yes; but this United States attorney says, "It is my opinion that any Indian who makes the above affidavit is prima facie entitled to vote"—whether it is true or false, and it was false. It was false because the facts are stated in this record, perfectly

clear and full, that these Indians lived, most of them, in the Auk village and the others lived over in the Douglas village in the same condition exactly, on their old village site, on the Indian reservation on which they had lived from time immemorial, and where they were born and where their old council house stands, and all that kind of thing. So that I say to the committee those votes are clearly illegal; even if those down on the two reservations created by the President of the United States are not illegal. There is no possible excuse to allow the Auk and Douglas Indians to vote; they never voted before and have never voted since. And everybody knows it is a fraud because it has been settled by these decisions in the courts of Alaska time and time again.

Mr. HUDSPETH. What kind of a house is that?

Mr. WICKERSHAM. The old council house is shown in the record here as one of the old community houses; it has a sign over it, and they all live there in common, and it is right in the center of this Auk Indian village.

Mr. HUDSPETH. It is not a public meeting house, is it?

Mr. WICKERSHAM. Yes; a public community house where they all live.

Again, Mr. Chairman, at page 174 of the record is the testimony of one of those officers. He testified that Mr. Reagan, who sits here, across the table, brought these papers in there, and talked to them about the situation. This is his statement, the witnesses statement. The witness is Richard McCormick, who lives at Douglas and says he has lived there for many years, and who was an election officer at this election. He was one of the judges of election on November 5, 1918. He says [reading]:

Well, during the afternoon Mr. Reagan came in and bid us the time of day, and pulled out a piece of typewritten paper, and read it off to us. It was supposed to explain the qualifications of an Indian to vote, telling about how he severed his tribal relations and adopted the habits of a white man, living like a white man, so I asked him how we would know whether they had severed their tribal relations or adopted the habits of a white man—how we were going to pass judgment on whether they should vote or not. He said if they had one of them papers that was qualification, and had signed the paper. I asked him if they signed the paper, and he said, "Yes, they sign the paper."

Q. John J. Reagan?—A. John J. Reagan.

Q. Assistant United States attorney at that time?—A. Yes, sir.

Q. He had been assistant United States attorney for several years?—A. Yes.

Q. Now, what time in the afternoon did Mr. Reagan come to the polling place and make these statements to you?—A. Well, I should judge between 3 and 4 o'clock.

Q. In the afternoon?—A. I didn't notice the time particularly. It was a wet day, and I wasn't paying much attention to the time, but it was along between 3 and 4 o'clock in the afternoon anyway.

Q. Now, did you ask him for any information about that subject or did he come and volunteer it to you?—A. I asked him about things, how he would be able to judge whether they were qualified to vote or not when they came along.

Q. What I mean is this: What started the conversation? Did he come and tell you that some of these Indians had the right to vote, or that he expected some one of them to vote?—A. He came along and pulled out this paper and started to read it to us, telling us about the law in regard to the Indian vote.

Q. Did he do that before you asked him for any information on the subject?—A. Certainly did; yes. We didn't ask him anything about it because he introduced the subject by pulling out this paper and reading it to us. We didn't know what he was doing over there.

That was done at these various places, and those men say very frankly they gave up their judgment and let these Indians vote who made this affidavit, which was a false affidavit, and they all knew it. Everybody knew it. These Indians were voted in a body in that way, and the record is perfectly clear on the subject.

Mr. O'CONNOR. How many of them were there?

Mr. WICKERSHAM. I think about 28 at both places.

Mr. CHINDBLOM. I do not suppose you examined any of the Indians?

Mr. WICKERSHAM. Oh, yes, sir, we did; as many as we could find. One or two testified they voted for Mr. Sulzer and one or two of them voted for me.

Mr. O'CONNOR. Does their testimony disclose the real facts in the case as to whether or not they had abandoned their tribal relations?

Mr. WICKERSHAM. Oh, yes; and shows where they live, and all that sort of thing. And we showed by other witnesses what the conditions were surrounding that particular place.

Mr. O'CONNOR. Some of those same Indians who made this affidavit?

Mr. WICKERSHAM. Oh, yes. They were on the witness stand and testified. But we depended very largely on the one witness, Valentine, who has lived there 30 or 40 years and been mayor of the town for 10 or 11 terms, to show the facts. He is the oldest settler there.

Now, in the report of the work of the Bureau of Education on the natives of Alaska for 1913-14 the report says:

The act of May 17, 1884, providing a civil government for Alaska, stipulated that the natives should not be disturbed in the possession of any land used or occupied by them. However, with the influx of white men the village sites, hunting grounds, and fishing waters frequented by the natives from time immemorial have often been invaded, native settlements exploited by unscrupulous traders, and the pristine health and vigor of the natives sapped by the white man's diseases and by the white man's liquor. To protect the natives the Bureau of Education has adopted the policy of requesting the reservation by Executive order now, before Alaska becomes more thickly settled by white immigrants, of carefully selected tracts to which large numbers of natives can be attracted and within which, secure from the intrusions of unscrupulous white men, the natives can obtain fish and game and conduct their own industrial and commercial enterprises. To the humanitarian reasons supporting this policy are added the practical considerations that within such reservations the Bureau of Education can concentrate its work and more effectively and economically influence a larger number of natives than it can reach in the small and widely separated villages. Such reservations have been made of Amette Island, of St. Lawrence Island, and of tracts of land at Hydaburg, Klawock, Fort Yukon, Klukwan, Port Gravina, Fish Bay, Long Bat, and on the banks of the Kobuk River.

The CHAIRMAN. That is the report?

Mr. WICKERSHAM. That is the report; I was reading from the report, at page 7 of the report. And a little further along in this report, at page 11, is given a list of persons in the Alaska school service who have charge of those Indian schools on those reservations, beginning with William T. Lopp, superintendent of education of natives of Alaska and Alaska division, and then different employees of the Washington office, Hamilton, Thomas, and Williams. Then employees in supply and disbursing office, Seattle—five persons, whose names are given. Then employees in Alaska, district superintendents of schools, Walter C. Shields, Andrew N. Evans, George E. Boulter, Henry O. Schaleben, William G. Beattie.

The Territory is divided into all those districts. And then follows special disbursing agent, reservation physicians, nurses, and teachers of sanitation, contract hospitals; and then follows a long list of teachers and school attendance in 1913-14, giving the names of the school-teachers—a long column. I call that to the attention of the committee. You will take judicial notice of the laws, and all that kind of thing. We have a complete system of Indian reservations and Indian schools, and all that established in Alaska, and in charge of those particular reservations.

The CHAIRMAN. I think you stated there they are furnished with physicians?

Mr. WICKERSHAM. Yes; and medicines and everything of that kind.

The CHAIRMAN. Does the Government furnish those without charge?

Mr. WICKERSHAM. It only furnishes the physicians and medicines, and everything of that kind. The Government does not feed them, but it maintains on those reservations these schoolhouses, and it maintains a physician there, just as it does on all reservations.

The CHAIRMAN. Is it his duty there to do this work without reference to outside work, or is he just a local physician?

Mr. WICKERSHAM. Sometimes they have a contract physician and sometimes they send the local physician there. Dr. French, who did this job at Ketchikan, is down there as a physician for the bureau of education in that district. There may be physicians, of course, who will go around to several of those reservations if they are near to each other and in different localities where the Indians have their community houses.

The CHAIRMAN. And paid exclusively by the Government?

Mr. WICKERSHAM. Paid exclusively by the Government; yes, sir. Now, we put Mr. Hawksworth, a superintendent of schools for southeastern Alaska, on the witness stand. Mr. Hawksworth testified substantially to all these things I have been saying to you. Rev. D. Waggoner, who had been there for many years, a school-teacher on the Klawak and Hydaburg reservations, testified to all those facts. And the whole matter has been very fully covered by the evidence in this case.

And, boiled down to a single proposition, I have made objection to three reservations only, Klawak, Hydaburg, Auk, and the Douglas reservations, all those places where they have their old community villages reserved to them by act of Congress. And I object to those men, not because I have made any objection now and said to you they did not wear store clothes. Many of them do. Many of them talk good English—not so many of them at Auk as at Klawak, but some of them do talk good English and some of them can read and write, and once in a while there is an Exhibit No. 1, who keeps store, like this man, Rudolph Walton, of Sitka, who is a higher type than Durkin and any of those other men, who have been put on as experts and standards to go by. He is higher in education than any of them, and yet the court of Alaska held he was not a citizen of the United States.

I want to call the court's attention—I use the term "court" all the time. This is a court created by the Constitution of the United

States; it is the highest court in the land for cases of this kind and I have the greatest respect for it as such, and you will accept my apology for using the word "court," as one gets into the habit of doing it. There is another decision by the court which passed on the question of the right of these Indians to form a town site. The question came up as to Haines, whether the Indians could assist in the formation of a town site and sign a petition. Under the law of Alaska, where there is a community of 300 white people, they may get up a petition of so many names and apply to the court and, on examination of the situation, if the court shall find that there are 300 people there, and it is a permanent community, and so forth, the court will permit them to be incorporated as a municipal incorporation. An application was made for the incorporation of the town of Haines and objection was made to the application upon the ground that a large number of Indians had signed, and the matter came squarely before the court as to whether the Indians were citizens of the United States and were capable of signing a petition for the organization of a town site. And the court held, straight up, they were not.

The CHAIRMAN. What tribe of Indians?

Mr. WICKERSHAM. The Haines Indians, about 90 miles north of the Auks, and they are of a similar type of Indian, exactly, except they are a little distance away from them.

The CHAIRMAN. Were they on their reservation?

Mr. WICKERSHAM. No; they were not. They were on a site, Mr. Chairman, just like this community site, where they have lived from time immemorial and the attempt was made to form an incorporated town around and including them, and the court held they were not capable of signing that petition because they were not citizens of the United States. I will try to find that case.

Mr. HAYS. You are not citing this for the purpose of challenging the votes of those particular Indians, but to show their civil status?

Mr. WICKERSHAM. To show their civil status; yes. I challenge their votes, yes; they were not citizens of the United States and not entitled to vote. They have to be citizens of the United States under the statute I read to you.

Mr. HAYS. But in this particular case, are the votes of those particular Indians——

Mr. WICKERSHAM. Oh, no; I am just showing the rule adopted.

Mr. HAYS. That is what I mean, the rule determining the civil status of the Indians.

Mr. WICKERSHAM. Yes; that is all I want to show by that. If I can not find it, this is what the court decided in that Haines case, and Mr. Grigsby is perfectly familiar with it. The court held the Indians of Haines could not sign that petition, because they were not citizens of the United States, and that the law would not permit the Indian community to be incorporated. That is the short of it. And the court refused to grant the permission to incorporate the town of Haines because it did not have 300 names of white men who were legal voters on the petition.

The CHAIRMAN. Have you a correct reference to this decision in your brief?

Mr. WICKERSHAM. I have, yes.

Mr. CHINDBLOM. What is it, a Nebraska case?

Mr. WICKERSHAM. No; an Alaska case.

Mr. CHINDBLOM. That is what I mean. Maybe it is one of those at the bottom of page 124?

Mr. WICKERSHAM. No; it is not one of those. It is the case of the Haines town site. Mr. Grigsby is familiar with it, but he probably can not remember it.

Mr. GRIGSBY. No; I do not remember the name of the case.

Mr. WICKERSHAM. I want to find that case; it is quite important and I will find it in just a moment, Mr. Chairman. I will call your attention, then, to the case of *Johnson v. Pacific Coast Steamship Co.*, in 2 Alaska, at page 224. In this case, the court held the evident purpose of Congress in its legislation in relation to the property rights of Indians in Alaska was to protect the natives in the possession of lands continuously claimed and occupied by them, but up to this time Congress has not fixed the terms by which they might acquire title thereto.

The court held [reading]:

The evident purpose of Congress in its legislation in relation to the property rights of Indians in Alaska was to protect the natives in the possession of lands continuously claimed and occupied by them, but up to this time Congress has not fixed the terms under which they might acquire title thereto. It is evident, therefore, that the complainants in this action can not have so much of the relief prayed for as would declare that the defendants were holding the lands in trust for their benefit or require them to convey to the several complainants.

Lands occupied and used exclusively by Indians at the time of the passage of the act of May 17, 1884 (23 Stat., 24, c. 53), could not be disposed of by the Interior Department to persons other than the native occupants, and a patent issued to such other persons would be without authority of law and void.

Indians, natives of Alaska, though living in villages, held not to be entitled to claim village sites, under section 11 of the town-site act of March 3, 1891 (26 Stat., 1099, c. 561; U. S. Comp. St., 1901, p. 1469).

That was the point I was trying to get in the Haines case, too. That is exactly the point the court decided in the Haines case and that is decided in the United States district court in Alaska—Indians, natives of Alaska, though living in villages, as they do here at Auk, held not to be entitled to claim village sites, under section 11 of the town-site act of March 3, 1891, which gives authority to incorporate, etc.

The CHAIRMAN. Are you reading from the text?

Mr. WICKERSHAM. I am reading from the syllabus in this case of *Johnson v. Pacific Coast Steamship Co.*, at page 225, of 2 Alaska.

Here is the Haines case: A petition was presented for the incorporation of Haines Mission under the act of Congress providing for the incorporation of any community in Alaska having 300 or more permanent inhabitants. The proofs showed that the court found that there were 216 white persons living within the proposed town and 151 Indians:

Held, The act of Congress requiring at least 300 permanent white inhabitants to incorporate, that Indians are neither electors nor citizens and can not be counted, and the petition denied.

The CHAIRMAN. Is that from the text?

Mr. WICKERSHAM. No; that is from the syllabi.

The CHAIRMAN. Will you read the text?

Mr. WICKERSHAM. Yes; I will.

On the hearing of the petition for the incorporation of Haines Mission the court held that the Indians living within the town limits were neither electors nor citizens of the United States, and should not be considered in calculating the 300 permanent inhabitants necessary to incorporate.

Mr. CHINDBLOM. Do they state the facts upon which they hold that?

Mr. WICKERSHAM. Yes; the facts were all stated here very fully in the decision of the court. [Reading:]

The petitioners herein are asking that the settlement now known as Haines Mission, situate on the western shore of Lynn Canal, be incorporated as a municipality, etc.

Against this petition four protests have been filed. The first of these is signed by 51 natives, and sets up that the signers all live within the proposed corporate limits and have valuable property therein, which would be taxable if brought within the limits of the municipality; that they are not citizens, and can not become such under the existing laws, and could have no voice in the management of the town if incorporated, and they pray that they be not counted "residents of the town for the purpose of incorporating; and that, if the said town of Haines is incorporated, the present proposed lines be changed, so as to exclude the Indian or native village from the municipality."

The second protest is signed by 16 residents of the town, among whom are a number of prominent Haines business men. This protest contains the allegation:

"That there are only about 150 white permanent inhabitants residing within the proposed corporation; that we do not believe the law contemplates counting the Indians as inhabitants for the purpose of incorporation," etc.

And that question was specially raised by these objections, and the court says, on page 592 [reading]:

The first of these requirements is found in the opening sentence of chapter 1778, paragraph 1, already referred to, the language of which is:

"That any community in the district of Alaska having 300 or more permanent inhabitants may incorporate as a municipal corporation, termed a town, in the manner hereinafter provided * * *."

Thus it appears at once that, before a community may seek to be incorporated into a municipality, it must have "three hundred permanent inhabitants." Is it that whites alone, or that both whites and Indians, are to be counted? The answer to this question is patent from a careful perusal of the act. It is plain that that phrase includes males and females, and that it is restricted neither to electors nor taxpayers.

It is also plain, I think, that Congress did not intend that natives should be counted, unless they were to be considered citizens. Suppose, for the sake of the argument, that the natives, who are not, and can not under the existing laws pertaining to Alaska become, citizens, are to be counted in making up the requisite 300. In the present instance, there are 216 whites and 152 natives. Among these whites are a considerable number of males who are either citizens or have declared their intention to become such, and who have resided in the community the required period. These are by statute (sec. 2, c. 1778, *supra*), declared qualified electors, and it is to them and to them only that the ultimate question of incorporation would be left to be decided by the ballot. The natives are not electors, and consequently could have no voice either in the determination of that question or in the subsequent management of the affairs of the municipality, in the event that the incorporation should be carried. But let us follow this construction a little further to its logical conclusion.

There are in Alaska settlements composed of 300 or more natives, in which for the sake of argument, let us suppose (and this is by no means an impossible or extravagant supposition) that there are no white men who are electors. There are in these settlements more than 60 "male adults" who are "bona fide residents of the community." Thus, under this construction, they would be qualified to file a petition for incorporation. For the requisite number of inhabitants is here, if Indians are to be counted. But it may be said that such a petition would not be considered under such circumstances. Why not? It might be that the condition of the natives and the community generally would be much benefited by incorporation, that the natives themselves are mentally

capable of managing their municipal affairs, and that every reason would point to the granting of the petition. What would be the result under these circumstances, where every requisite preliminary to the granting of the petition was present, and where every reason would move a judge to grant it? The statute requires under those circumstances that the judge shall order an election "to determine whether the people of the community desire to be incorporated," and to that end he must appoint "three qualified voters" to act as judges of "such election."

Section 2 provides:

"That every male person twenty-one years of age who is a citizen of the United States or who has declared his intention to become such, and who has resided continuously one year next preceding the election in the District of Alaska and six months preceding the election within the limits of the proposed corporation, shall be qualified to vote at said or any subsequent municipal election."

But within the proposed boundaries of such a community there could be found persons neither qualified to fill the office of the judge of election nor to vote upon either the question of incorporation or for officers to manage the affairs of the municipality. What would be a more futile proceeding than to entertain such a petition and grant an order thereon; and yet, if the natives in the case at bar are to be counted in making up the 300 inhabitants for the proposed town of Haines, consistency demands that a petition filed under the circumstances similar to the case just stated must be considered and an order issued thereon. It must be plain to anyone who stops to consider the situation that Congress, when it enacted this statute, had no intention of placing upon the books an act which would be impotent or filled with inconsistencies, and to place upon this act a construction that would develop into such a situation as that would, in my opinion, be to place upon it an interpretation never intended.

But counsel for petitioners argues with much ingenuity that certain of the natives residing at Haines are citizens of the United States and must be counted. The question as to the citizenship of the natives of Alaska has frequently been presented to this court on other occasions, and I am of the opinion that the act of Congress of February 8, 1887 (24 Stat., 388, c. 199), did not come within the provisions of article 3 of the treaty of cession, to wit:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years, but if they should prefer to remain in the ceded territory they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country."

In my opinion this act had no reference to the natives of Alaska, and Congress has yet to act in their behalf. That there are many natives who are to-day capable of becoming citizens and who would make better citizens than hundreds of men who are annually given the franchise, I grant, but Congress has not yet seen fit to open the doors to the Alaskan natives by legislation.

It is with much regret that I have arrived at the conclusion that the natives may not be counted, for it is undoubted that this community would be much benefited in every way by incorporation. But, since the community is at this time insufficient in number of inhabitants, I have no discretion in the matter, but must deny the petition for that reason.

Mr. GRIGSBY. He holds they could not do it; he holds contrary to the Circuit Court of Appeals.

Mr. WICKERSHAM. To some extent, that matter has been reversed by the Nagle case, but not entirely, because the Nagle case does not hold Indians in a community of that kind could vote.

Mr. GRIGSBY. Oh, no; I do not claim that.

Mr. WICKERSHAM. Oh, no. And the decisions of the courts in Alaska are all one way, that these Indians are not allowed to incorporate even their own Indian villages; they can not sign incorporation papers for incorporating a community where there are 300

white men or less, and they are needed to make up the number. And the court holds, straight up, they are not entitled to vote and not electors in the Territory of Alaska.

Now, Mr. Chairman, there are a lot of decisions along this line in Alaska, and I am only going to cite you to two or three of them. In the case of *United States v. Cadzow*, the court held:

The United States has guaranteed to the Indians in Alaska the right to the occupancy and possession of the lands occupied by them when the acts of Congress of May 7, 1884 (23 Stat. L., 24, ch. 53) March 3, 1891 (26 Stat., 1095, ch. 53); May 4, 1898 (30 Stat., 412, ch. 299); and June 6, 1900 (31 Stat., 330, ch. 786) were passed.

Citing all the acts of Congress which reserve those lands for the benefit of the Indians.

In the next case of *Grosword v. Whelpley*, the court held:

A reservation may be made in Alaska either by treaty, by Executive order, or by an act of Congress, and all of these methods are expressly recognized by the homestead and pre-emption laws. No set form of words or phrases is necessary to set aside a reservation; the sovereign is not parting with the title, but only setting it apart to be used for specific purposes. It is enough, if there are sufficient words to indicate the purpose of the power that can act, to show that in a given case it is intended to act, etc.

To make a long story about this matter short: These people on these three Indian reservations could not vote, because they were living in a sort of community; they were living in tribal relations as the Auk Indians, the Klawak Indians, and the Hydaburg Indians; they were living on reservations created by the President of the United States and by act of Congress and were not living upon allotted lands but living together in a small community. Those in Hydaburg had left the old towns at Hydah, and other places and were brought up there by the Bureau of Education. That is all testified to by officials, and they were brought up there for the purpose of forming an Indian community; so that they could escape from the white people.

Now, our Territorial legislature has passed another law——

Mr. O'CONNOR. Before they were brought to this reservation would they have enjoyed the right to vote?

Mr. WICKERSHAM. Oh, no; not at all; no more than the Auk Indians would, because they were living in a community, not separate and apart. They were living in their old Indian community house, and in the old Indian community, all huddled up together as they had for a long time. And they are a very interesting race of Indians; they have put up their totem poles, making it a very interesting village, and, in time, when permitted by the officers in Alaska to assume the habits of civilized life and become citizens, will make good citizens. The Legislature of Alaska passed another law for the incorporation of Indian villages. They are permitted to form Indian communities—Indian villages.

Mr. CHINDBLOM. The laws of Alaska, 1915, page 24.

Mr. WICKERSHAM. An act providing for local self-government in certain native villages is the Territory of Alaska. Here is an act of the Legislature of Alaska permitting these Indians to form communities of their own. And the Indian agents, the Indian officers, the heads of their schools, etc., testified, Mr. Hawksworth and Rev. Waggoner, they both assisted in the preparation of those bills—or

Waggoner did. Hawksworth said he did not know anything about it at the time, but he helped to carry it out afterwards. And they passed this bill for the purpose of forming those communities. I want to read it to you [reading]:

SECTION 1. That any village in the Territory of Alaska, whose inhabitants are members or descendants of members of the Thlinget, Tsimpsean, or Hydah Indian Tribes, or other native tribes of Alaska, having not less than 40 permanent inhabitants above the age of 21 years, may form a self-governing village organization for the purpose of governing certain local affairs, as hereinafter described and in the manner hereinafter provided.

The next section provides the method of securing organization, and then the qualifications of those entitled to be members in such self-governing community village are fixed as follows [reading]:

SEC. 3. That the qualifications of an elector hereunder shall be as follows: He or she shall be a member or descendant of members of the Thlinget, Tsimpsean, or Hydah people, or people belonging to other Alaskan Indian Tribes, and shall be over 21 years of age, and shall have resided within the limits of the village proposed to be organized for a period of six months.

And it specified the boundaires and so forth. Then they are permitted to hold their own elections in their own villages at different times from when we hold ours. And the evidence shows here that both Klawak and Hydaburg are organized under this act as Indian villages and presented a petition, showing they are tribal Indians and living on the tribal reservation, to form a tribal reservation for their own government, not under the laws of the United States but under the laws passed by the Territorial Legislature. So that I can not discover what sort of an argument anybody will make who will say they are not tribal Indians, because the Bureau of Education has no jurisdiction over them if they are not tribal Indians. Under the laws passed by Congress the appropriations are made for the support of Indian schools in Alaska, and those schools are supported in these two towns and paid for out of Government appropriations, and the white man's schools are supported by the white man and paid for by the white man, separate and apart entirely, and their government officials are there.

MR. GRIGSBY. Do you consider that a valid act—that Territorial act you have just read?

MR. WICKERSHAM. I consider, as long as they have complied with it and organized under it and carried it out, that it is valid.

MR. CHINDBLOM. You mean it is an estoppel?

MR. WICKERSHAM. In the nature of estoppel.

MR. CHINDBLOM. Against them?

MR. WICKERSHAM. They have admitted they were Indians. They signed this petition as Indians.

MR. GRIGSBY. The legislature had a right to pass the act?

MR. WICKERSHAM. I do not say that at all. I say this: I do not know why the legislature did not have a right to pass it.

MR. GRIGSBY. Neither do I. I think they had a right to pass it.

MR. WICKERSHAM. I do not admit they had any jurisdiction over the Indians, if that is what you are getting at; of course not. Here is an act passed by the legislature, though, and those people organized under that act, incorporated and organized Indian municipalities on those reservations, and they are bound by it and can not vote as long as they stay there in those tribal relations, under the United States statutes.

Mr. CHINDBLOM. Of course, if representatives of the Government assisted in the formation of those villages——

Mr. WICKERSHAM. They did.

Mr. CHINDBLOM (continuing). Then, to that extent the estoppel is weakened as against them?

Mr. WICKERSHAM. I do not think so; I think it is strengthened, because it is testified they did it for the purpose of giving those Indians some form of organization away from the white men. They testified they were trying to get them away from the white man's Government, and to go under the control of an Indian form of government; and, as weak and impotent as it is, it is an Indian form of government.

Mr. CHINDBLOM. But if the Indians acted under the guidance and direction of others, of course it becomes less forceful against them.

Mr. WICKERSHAM. They did act under the officers of the United States who were sent there to protect them, and to educate them, and all that sort of thing, and to give them medicine when they were sick, etc. There is no room to argue it can weaken the situation if you gentlemen only could get it presented to you a little better than I have presented it. These three places are Indians reservations, held so by the courts.

Now, there is a decision by the Secretary of the Interior in respect to this particular place at the Auk village, in which he gives a lengthy opinion, which I have here somewhere, in which he passes upon the legal situation at this Auk Indian village, and the Secretary of the Interior has instructed the Commissioner of the General Land Office with respect to the law applicable to this particular reservation here at the Auk Indian village. He says it is an Indian village and substantially a reservation; that the white man must keep away from there. We sought to get a bill through Congress one time to do something with these tide flats, and the Bureau of Education and the Secretary of the Interior interfered and would not let us touch them, holding they were their lands, and they kept us from doing anything about it because it was an Indian reservation.

The CHAIRMAN. Did these Indians all vote in one precinct?

Mr. WICKERSHAM. No; they voted over at Douglas and Juneau, and they all voted, so I am informed by the gentlemen present, upon these false statements which they were induced to sign by the district attorney there, and he instructed them that if they signed that affidavit they were entitled to vote—not if they complied with those provisions and made proof that they were entitled to vote, but if they just signed the affidavit. And I am told a lot of those affidavits are here in the returns and you can find those.

The CHAIRMAN. The affidavit, "if true"; they qualified it?

Mr. WICKERSHAM. Yes; if true. It stated the law correctly: there is no question about that. But he wound up by saying if they just sign this affidavit, it does not make any difference about the facts, they are entitled to vote. Of course, that is not the law and he negatived the whole thing by the instruction to the election officers.

Mr. GRIGSBY. Who would pass on the truth of it, Judge?

Mr. WICKERSHAM. I suppose the election officers would have to pass on it, but they all admitted they did not pay any attention to it after Reagan came there and instructed them, that they just gave

up to his judgment; and when the Indians came in and signed affidavits, they just gave up their judgment and let it go at that. You will find that in the record very fully. But it would not make any difference if they did hear evidence, even, and decided wrongly; it would not make the vote valid.

Mr. GRIGSBY. It would be a question, then, for this committee.

Mr. WICKERSHAM. It would be a question, then, for this committee, as it is now. If a vote is invalid it does not make any difference what the election officers did. Of course, they followed a wrong instruction.

There is one thing more; that is, the special election of June 3, 1919, and I can make a short work of that. I have made my objections to that election of June 3, 1919, the special election after Sulzer's death; I have made my objections to that very fully. The Territorial legislature has only one power, and that is the power to fix the time of holding the special election. The law provides that when that is held it shall be held in accordance with the laws of Congress for the holding of a general election in every way.

The CHAIRMAN. In what respect, now, do you contend it was not held the same as the election in November?

Mr. WICKERSHAM. Well, in almost every way. In the first place, there never was any canvass or complication of the vote; at the time Mr. Grigsby came here with his certificate, only something like 30 of the precincts in the Territory had reported. He does not admit the exact number but substantially that is his admission in the record; that they had sent in the telegraphic statement from the clerks of the courts that precinct so-and-so cast so many votes for him and so many votes for Jones, and somebody else got a telegram from somebody else and sent it in to the clerk and it became a second, third, or fourth hand rumor or statement. And upon that sort of statement, they issued a certificate to him.

Mr. HUDSPETH. You contend that although you were not elected at the special election that Mr. Grigsby's election is void?

Mr. WICKERSHAM. Absolutely. I was not a candidate at the special election, because I was satisfied it was a false election.

Mr. HUDSPETH. Your contention is although this committee should find you were not elected and Mr. Sulzer was elected, that Mr. Grigsby is now holding his seat by a void election?

Mr. WICKERSHAM. Yes; I do not think there is any question about it.

Mr. ELLIOTT. That it was illegal in every way?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Is that based upon the failure to canvass?

Mr. WICKERSHAM. No.

Mr. CHINDBLOM. That is one objection?

Mr. WICKERSHAM. That is one objection. I have tried to make this committee understand clearly that law of 1906 and it is re-enacted by the law of 1912, which provides that the law of 1906 shall apply to elections to be held under the act of 1912, and that the Territorial legislature has no authority to change that act of 1906 in any way.

The CHAIRMAN. But they have the right, as I gather from your statement, to call a special election.

Mr. WICKERSHAM. To fix the date only.

The CHAIRMAN. And that was done?

Mr. WICKERSHAM. That was done.

The CHAIRMAN. And then the election was held?

Mr. WICKERSHAM. And then the election was held.

The CHAIRMAN. And it was substantially the same kind of an election as your general election?

Mr. WICKERSHAM. No; it was altogether a different kind of an election.

The CHAIRMAN. I want to know wherein it differed.

Mr. WICKERSHAM. It differed in this, that under the act of 1906, as amended by the act of 1912, every precinct must be compiled by the canvassing board.

The CHAIRMAN. I understand; that was your objection.

Mr. WICKERSHAM. That was not done.

The CHAIRMAN. And what else?

Mr. WICKERSHAM. Almost in every phase of the election.

The CHAIRMAN. Let us have that specifically.

Mr. WICKERSHAM. All right, I am glad to do it. I just did not want to take up too much of your time. Section 17 of this act of 1912 provides that the date of the election for the Delegate to Congress fixed in the act of May 7, 1906, shall be changed from a certain day in August to the Tuesday next after the first Monday in November, so as to make it coincide with the general November elections. It then provides:

* * * that all of the provisions of the aforesaid act (of May 7, 1906) shall continue to be in full force and effect and shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein: *Provided*, That the time for an election in said Territory for delegate in Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law or by the death, resignation, or incapacity of a person elected, may be prescribed by an act passed by the Legislature of the Territory of Alaska: *Provided further*, That when such election is held it shall be governed in every respect by the laws passed by Congress governing such elections.

So that when that special election time is fixed by the local legislature, then it must be held under the laws passed by Congress governing that election, and that is an exclusion of any power in the local legislature. Now, notice that Mr. Grigsby drew an act and had the local legislature pass it, providing in almost every respect a different method for holding that election from that prescribed by United States law.

Mr. HAYS. You are going to enumerate some of those variations from the United States law?

Mr. WICKERSHAM. Yes; I am going to enumerate some of them now. The first section of the Grigsby act is divided into seven paragraphs, and we will examine them singly. The first paragraph reads as follows:

SECTION 1. In case of a vacancy caused by death, resignation, incapacity, or from any other cause in the office of Delegate from Alaska in the House of Representatives the governor of the Territory of Alaska shall cause a special election to be held to fill such vacancy and shall issue a writ ordering such special election, to be held not less than 30 days from the date of the writ. The governor shall, immediately upon the issuance of the writ, notify the clerk of the United States district court of each division of the Territory of the issuance thereof and giving such notice by telegraph where necessary

and the clerk of court of each division of the Territory shall immediately cause notice of such writ to be given to the city council of each incorporated town in his division and to each United States commissioner therein by the most rapid means of communication, telephone, telegraph, or other.

I say in my brief: The first sentence in the foregoing paragraph is substantially identical in language with that of the act passed by the Alaska Legislature and approved by the governor on April 29, 1915, above quoted, prescribing the time when a special election may be held to fill a vacancy in the office of Delegate to Congress and if that portion of the act stood alone, with a proper title, it would be valid. The second sentence is in direct conflict with the last clause of section 17 of the organic act of August 24, 1912, which provides, "that when such election is held it shall be governed in every respect by the laws passed by Congress governing such election," etc. In other words, any change or any attempted change in this act, under which this special election was held, passed by the legislature, which changed the laws of Congress, was invalid and void.

Mr. CHINDBLOM. But what changes were there?

Mr. WICKERSHAM. Paragraph 2—there are a lot of changes in that paragraph in the matter of giving notice and all that. Those are all extra; none of them in the act of Congress.

Mr. CHINDBLOM. What does the act of Congress say about giving notice?

Mr. WICKERSHAM. It provides notice shall be given in a certain way by posting the notice, etc. This provides it may be given by telephone, telegraph, and otherwise.

Mr. GRIGSBY. That is the notice calling the election by the governor.

Mr. HUDSPETH. You contend that act is void?

Mr. WICKERSHAM. I do.

Mr. HUDSPETH. Then, as I understood you in your former argument, you contend the act under which the Australian ballot system was provided was void?

Mr. WICKERSHAM. I think most of it is void, because it is in conflict with the provisions of the act of Congress.

Mr. HUDSPETH. I am asking you this to get your judgment on it; I am not passing my judgment on it. I am asking you if the act under which Mr. Grigsby was elected is void, then the act under which you and Sulzer contested for this delegateship was void?

Mr. WICKERSHAM. Oh, no; not at all.

Mr. HUDSPETH. I do not get you then.

Mr. WICKERSHAM. Because we were elected under the United States statutes.

Mr. HUDSPETH. I misunderstood you; I thought you were elected under the Australian ballot law.

Mr. WICKERSHAM. That had nothing to do with the holding of the election. The act of Congress only provides the ballot shall be substantially in the following form, and they have added to that form somewhat and that is the only change. There is no contention but what, in certain specific cases, proper notice was given and all that kind of thing in the general election—none whatever. The second paragraph of the Grigsby bill reads:

Upon the receipt of such notice it shall be the duty of the common council of each incorporated town to at once give notice of the election by posting a

written or printed notice in three public places in each precinct in said town, specifying the time, place, and purpose of the election, and in case there are one or more newspapers of general circulation published in the town, then a copy of such notice shall be published at least once in one of such newspapers prior to the date of election.

This is in direct conflict with the last clause of section 17, "that when such election is held it shall be governed in every respect by the laws passed by Congress governing such election," because it entirely changes a lot of the features of that act; and also in conflict with provisions of section 4 of the congressional election law of Alaska, act of May 7, 1906, because it changes the duty of the common council, adds new duties, and provides a different mode and time of publication of election notices, and is therefore wholly ultra vires, null and void. It changes the whole system; changes the manner of notice, the time of notice, etc. The next paragraph is:

The common council of each incorporated town shall also, at the time of providing for the giving of notice, appoint three judges of election and two clerks for each voting precinct, all of whom shall be qualified voters of the precinct; and no more than two judges and one clerk shall belong to the same political party, and shall immediately notify said judges and clerks of such appointment.

This paragraph changes the rule of time for appointing election officers prescribed by section 4 of the act of May 7, 1906, and is therefore ultra vires, null and void. The officers are the same, and all that sort of thing, but it changes the rule of time for appointing them. Then, paragraph 4:

The United States commissioner in each recording district shall, upon receipt of said notice from the clerk of the court, at once proceed to give notice of the election by posting written or printed notices thereof, specifying the time, place, and purpose of the election, which notice shall be posted as follows: One at the office of the commissioner in said recording district and one in each of three conspicuous public places in each of said voting precincts in said recording district, one of which shall be the polling place in the precinct.

This paragraph changes the time of giving notice of the election provided in section 4 of the act of May 7, 1906, which says that it shall be at least 30 days before the date of election.

Mr. HUDSPETH. That is the legislative act?

Mr. WICKERSHAM. That is, the legislative act makes an alteration so that they can give less than 30 days' notice, while the congressional act provides there shall be a 30 days' notice. The next one is:

The failure of any commissioner to post said notice as herein provided on account of notice not having been received by him from the clerk of the court in time shall not invalidate the election held in any precinct if held at the time provided for in the writ issued by the governor of Alaska.

This paragraph was inserted in this "trick" and fraudulent act by the legislature, because it was known to the contestee that drew it that notices could not be given in accordance with sections 4 and 5 of the act of May 7, 1906, "at least 30 days before the date of the election." So that they cut out the 30-day clause provided for by the act of Congress and left it so they might give any old notice, of one, two, or more days, providing the election was held on the proper day. They changed that law entirely.

Mr. HUDSPETH. You are questioning this act and the validity of this election in the capacity of a citizen and not as a contestant?

Mr. WICKERSHAM. I was not a candidate then at all. I say it is a fraudulent act and it is void, because it is in conflict with the constitution of Alaska, as Mr. Grigsby calls it and with which I agree. Then paragraph 6:

Each United States commissioner shall also select, notify, and appoint from the qualified electors in each voting precinct three judges of election for said precinct, not more than two of whom shall be of the same political party.

This paragraph is also in direct conflict with the last clause of section 17, "that when such election is held it shall be governed in every respect by the laws passed by Congress governing such elections," to wit, the act of May 7, 1906. Section 5 of said act requires the commissioner to select and appoint such judges of election "at least 30 days prior to the date of holding such election," which this paragraph omits purposely, so as to have them appointed at any moment before the election. The paragraph for that and other reasons is ultra vires, null and void.

That is true all the way through this bill; every section in it was fixed so that they did not have to give the 30 days' notice, so that they did not have to divide the precincts more than 60 days before the election. It provides in here for the making of these precincts permanent at that election and takes away from the commissioners in the precincts the right to divide the districts up into precincts for this election. In other words, it utterly repeals in those most fundamental ways the act of Congress and substitutes another act for it, to wit, the act in question.

Mr. GRIGSBY. You say that the act of 1915, which allowed the governor to call an election on 30 days' notice, was valid?

Mr. WICKERSHAM. No; I do not say that.

Mr. GRIGSBY. You did say it just now.

Mr. WICKERSHAM. I say substantially it is; yes.

Mr. GRIGSBY. Now, if the election can be called on 30 days' notice by the governor, how can the commissioner give 60 days' notice of it?

Mr. WICKERSHAM. It may be that part of it is invalid and void; but, generally, it is what Congress provided you might do and you must do that, in view of the act of Congress itself which gives the commissioners the power and makes it their duty, at least 60 days before election, to subdivide their districts. Is not that correct?

Mr. GRIGSBY. No, sir.

Mr. WICKERSHAM. You do not think the law of Congress provides it shall be done at least 60 days before the election?

Mr. GRIGSBY. The law of Congress permits the legislature absolutely to fix the time of a special election.

Mr. WICKERSHAM. But it must be fixed in view of the clauses of the act of Congress. You know you can not repeal the act of Congress.

Mr. GRIGSBY. Congress has repealed that act of Congress.

Mr. WICKERSHAM. Oh, no; it has not; not at all. The act of Congress says all you can do is to fix the time, and when the time is fixed the election must be held according to the provisions of the act of Congress itself. And that they did not do in any way.

Of course, this is not so very important to me, Mr. Chairman—this election is not. But I still think it is a fraudulent election and it is

void, because it is substantially a repeal of all the acts of Congress. And I am in earnest about it for this reason, Mr. Chairman, that we are governed to-day in Alaska by Congress. It is the supreme legislative power and you gentlemen are sitting here testing the rights of our people in the elections of the Territory of Alaska and we want you to test them according to the law.

You might say, "Oh, well, that did not hurt anybody, and we will pay no attention to it." But it will hurt somebody next time, and we are respectable people in Alaska and we appeal to you to decide this case and there is not any other power besides you, and while you may say, "Oh, well, you are not particularly interested in that," I may be interested in it the next time and am interested in it now as a citizen, and I think it ought to be settled and settled right—all these questions here. And while this has taken a lot of time, it is very important to the people of Alaska, and I hope the committee will give earnest attention and careful attention to all of these matters, because they are important. We have the worst fraudulent situation in the elections of Alaska you ever saw and it is getting worse all the time; and without you stand by and help our people get good elections, clean elections, honest elections in Alaska, you had much better abandon your Government in Alaska and let us govern ourselves, and if you won't stand by and give us clean elections in Alaska, give us authority to do it and we will do it. And we appeal to you to have clean elections in Alaska.

The difficulty is not with the people in Alaska: the difficulty is with the officers in Alaska, as you can see from an examination of this record, the clerks, deputy marshals, and all that sort of thing. You talk about Michigan; the Newberry case and all that up there is merely a formal violation of the law in spending a little more money in the election than the law requires or permits to be spent. But in Alaska it is so much worse that the fellows up in Michigan are pikers. They resort to every sort of crime in Alaska, and when the men they have up there try to tell the truth about it, they will beat them up and kick them off the wharves. And it is time for you people to say we have to get good government in Alaska and to secure honest and clean elections. But you gentlemen around this table are responsible, and if you won't do your duty, why then you may expect a continuation of this system in Alaska until we get some people who will do their duty. We people in Alaska want to secure clean government, but we want some help, and we want every man around this table to consider this matter as a clean legal proposition and to see if he can not help us. And this fraudulent election of June 3 was the most impudent thing ever pulled off on the people of this country. Every single section in that law is invalid and void if you try it by the standard of the exact phraseology in the election law of 1906 and 1912. And Mr. Grigsby knew it at the time and he knows it now. And we appeal to this committee for relief from the unfortunate situation which prevails there.

Mr. O'CONNOR. Does anybody but yourself protest against this special election at which Mr. Grigsby was elected?

Mr. WICKERSHAM. They protested by refusing to go and vote.

Mr. O'CONNOR. How many votes were cast at that special election?

Mr. WICKERSHAM. Of course, nobody knows except as it appears in the newspapers; there is no proof in the record about it at all. Mr. Grigsby in his proof says he got how many—2,900 votes?

Mr. GRIGSBY. The returns are all here in evidence under the House resolution.

Mr. WICKERSHAM. Oh, no; not for the special election.

Mr. GRIGSBY. Yes.

Mr. WICKERSHAM. I never heard of it.

Mr. CHINDBLOM. Let me ask this, Judge Wickersham: Do you take the position that even though we should find you, as a matter of fact, were elected in November, 1918, we should still now pass upon the validity of the election of June 3, 1919?

Mr. WICKERSHAM. Not at all; that would be unnecessary. It is only in the case you find I was not elected and some one else was and there was a vacancy to be filled that there would be any necessity for passing upon this other matter. In his brief, at the last page, Mr. Grigsby says:

Contestee has been elected at the special election held in compliance both with the 1915 act, of which contestant approves—

which I do not approve—

* * * and with the 1919 act, which he condemns—
and which I do condemn.

At that special election 144 out of 164 voting precincts sent in election returns. The total vote in the missing precincts at the last previous general election was about 300. Contestee's plurality was 1,277.

I thought you gave the number of votes?

Mr. GRIGSBY. I did somewhere there.

Mr. WICKERSHAM. Do you remember that?

Mr. GRIGSBY. About 4,800, I think. Look in the brief and you will find it.

Mr. WICKERSHAM. I received, I think, 4,400 and something.

Mr. GRIGSBY. And I received exactly two-thirds of what you did.

Mr. WICKERSHAM. You received two-thirds of what I did. The other man received, then, a very small vote. So that amounted to a little more than 50 per cent of the total vote?

Mr. O'CONNOR. As a matter of fact, is not a smaller vote always cast in a special election?

Mr. WICKERSHAM. But there were two candidates running at this special election. The truth of it was the people in the Territory did not have any notice. And when the certificate was issued it showed only 33 of the precincts reported.

Mr. HAYS. What is the total number of precincts?

Mr. WICKERSHAM. One hundred and fifty-nine.

Mr. GRIGSBY. One hundred and sixty-four, and 159 made returns.

Mr. WICKERSHAM. There is no evidence of it. I do not know whether they did or not. I assume they did, if you say so.

Mr. GRIGSBY. Excuse me, Judge, but the House resolution permits the successful candidate in the special election to have those returns sent down here before this committee the same as in any other election.

Mr. WICKERSHAM. That is correct. You have had that done?

Mr. GRIGSBY. Yes.

Mr. WICKERSHAM. I did not know that. That is the first time I ever heard of that. But the certificate of election was issued to Grigsby 14 days after election, when they knew nothing about what the returns were going to show, except by guessing at them.

That is all I have to say at this time, gentlemen.

(Thereupon the committee adjourned until to-morrow, Thursday, Apr. 1, 1920, at 8 o'clock p. m.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ELECTIONS No. 3,
Thursday, April 1, 1920.

The committee met at 8 o'clock p. m., a quorum was present, Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. Mr. Grigsby, you may proceed with your argument.

STATEMENT OF HON. GEORGE B. GRIGSBY, CONTESTEE.

Mr. GRIGSBY. Mr. Chairman and gentlemen of the committee, you all realize who have tried lawsuits. I suppose, that it is an easier proposition to discuss the testimony of witnesses whom you examined personally than to discuss that which you never heard until you heard it being argued. Some of you have read this record, most of you have read it to a considerable extent, but none of you either sat on a jury and heard the testimony put in or acted as attorney in the case, and I am in about the same position. I was present at the examination of a very few witnesses, and I have, on account of the pressure of other work, put off from time to time getting the conception of this testimony that I ought to have, so that I do not want you to think that I am as familiar with the facts in the case—that is, the testimony of the different witnesses—as I would be if I had tried the case.

Therefore if I make any misstatements, which I do not intend to do, I want to be corrected either by you gentlemen or by Mr. Wickersham. I will try not to make any misstatements and to discuss the case fairly both as to the law and the facts, which I do not think has been done so far.

I think that Mr. Wickersham has been exceedingly liberal in indulging his imagination in this case, both as to the law and the facts, and I think that I can demonstrate at least that.

In his opening, the first session, he gave you an outline of the situation of this case, the situation he was in which required its commencement, which was not correct.

Mr. Sulzer, as you know—you have been told here many times—died on April 15, 1919. On the 16th or 17th a certificate of election was issued to him, after his death. Mr. Wickersham told you that it was incumbent on him to file his petition in his original proceedings, which he calls a contest between himself and Mr. Sulzer, within 30 days, and that is the reason that subsequently it was necessary for him to go up to Valdez and cause some subpoenas to be issued, because time was running against him; that what he had to do had to be done

in 30 days. That is his explanation for what he did, which, as I shall proceed to show, is without any justification whatever.

Now, there is but one way to commence an election contest. There is but one provision of law that authorizes it, that is the laws of the United States, the Revised Statutes, section 105, which provides that all election contests for seats in the House of Representatives must be commenced by service upon the sitting member or the successful candidate within 30 days after the declaration that he is elected. That is the only provision there is. Now, if he is dead, it can not be done. You can not contest the seat of a man that is dead, because he has no seat. Under such circumstances the only recourse a man has who claims the seat is to get some authority to take testimony, to proceed to establish his right to the seat. If Congress is not in session, he can not get that authority. There is nothing he can do and there is nothing he can fail to do which affects his rights. No time is running against him because there is no law compelling him to do anything.

Now, for instance, when Mr. Sulzer died on April 15 or 16, and left a vacancy in Congress, Congress was in recess. It would have been in recess until the following December if a special session had not been called. While they were in recess there was no way on earth that Mr. Wickersham could have his right to the seat established. There was nothing he could do. No law says he must file anything with the clerk. There is no law that says he must file anything with the clerk in a contest regularly begun. Nothing is filed with the clerk of the House. The law provides that you shall commence your contest by serving your opponent with notice. Then he answers within 30 days. Then a reply is permitted. And then you take the papers to a notary public, and there are subpoenas to be issued and depositions to be taken, and after those depositions are taken and transcribed the notary public seals them up with copies of the pleadings and mails them to the clerk of the House. The clerk of the House opens that testimony, calls the parties together and arranges for the printing of it. When it is printed into a record, then the time commences for writing the briefs. When the parties are served with the printed record, then the contestant has 30 days to file a brief and the contestee has the succeeding 30 days. The contestant has 30 days more to file a reply brief if he wants to, and when he has done that or waived it, the clerk takes everything to the Speaker of the House, and that is the first time the House knows there is any contest. There is no law anywhere that put the burden upon the contestant, after Mr. Sulzer died, to file anything anywhere.

But here was the situation: Everybody knew that there would be a special session of Congress. Mr. Wickersham knew it. I knew it. And he knew that, presumably, the governor of Alaska would sooner or later call a special election to fill that vacancy, and he knew we did not have any law under which that election could be called and held, as I will proceed to show. We had an incomplete and defective law, but we did not have a law under which an election could be held. He knew that an act would be passed by the legislature so that an election could be called. He did not know what period of notice we would provide. He did not know that we would

pass the law we did, and, of course, he knew that if he could get down here to Congress soon after it met in special session, with a respectable *prima facie* showing that he was elected on November 5, 1918, he might be able to be seated and leave the person elected at the special election to be the contestant. There would not have been anything radically wrong about that, and so he got up this petition, and it is sworn to May 3. It is accompanied by affidavits sworn to as early as the 23d of April, eight days after the death of Mr. Sulzer.

This, of course, was printed down here, but it was dated May 3 and mailed down here, then printed subsequently, by order or not by order of the committee, and it is accompanied by affidavits which are very similar to much of the testimony that has afterwards been taken in this case, and, of course, it presents a perfect *prima facie* case entitling the gentleman to a seat in Congress. He does not petition that Congress adopt a procedure whereby he can establish his right to the seat. He petitions Congress to give him the seat on the strength of this *ex parte* showing. That is what he asks. He does not do what other contestants have done in similar cases—ask to be allowed to establish his right to the seat—but he asks to be seated on this showing. He does not mention the fact in this petition that the special election had been called or was about to be called in Alaska, but when he got down here with this that fact was discovered, and Mr. Wickersham did not get the seat on the strength of this petition—either was prevented or abandoned that idea—and resolution 105 was introduced, which does contemplate the special election, provides for the successor of that candidate at that election to come in and defend Mr. Wickersham's claims, and, subsequently, you gentlemen amended it, and we took the testimony under House Resolution 105, together with the procedure set forth in the Revised Statutes.

But I want you gentlemen to understand I am not criticizing him for it, but the reason for his haste was not that any statute was running against him. The reason for his haste was that he wanted to get here and get the seat. There is nothing wrong about that. Here is what was wrong: He went over to Valdez, and before this petition even got to Washington, went to a notary public and caused him to issue subpoenas to the soldiers and dragged them up there before the notary public and sought to ascertain how they had voted at the election of November 5, 1918, when he had no authority under the law to do any such thing.

Now, supposing that you had a case in court, which you were perhaps about to commence, which you had not filed, which you did not know whether you would commence or not, and it was a case where you wanted to take the deposition of the adverse party. You know you can go to a notary public in some jurisdictions and get out subpoenas to take depositions and take the deposition of the adverse party, after you have commenced your law suit. Suppose you did that before you commenced your law suit. You would be abusing a process of the court. You are guilty of contempt of court. An this contestant was guilty of contempt of the House of Representatives when he went up to Valdez and had a notary public issue subpoenas ordering soldiers or anybody else to appear.

Now, I mention this fact because when these boys were informed of the fact that this was a fake proceeding and a fraud on them and,

being so advised, refused to testify, he seeks in this case to bind me by the actions of an attorney who advised them as to what their strict legal rights were at that time. Mr. Wickersham had no more business, no more right, to find how those soldiers voted at that time than any of you gentlemen. And no one had a right to find out until he had taken the steps authorized by law, which would entitle him to proceed to examine them. When it came out up in the newspaper that Mr. Wickersham had caused subpoenas to be issued in a purported contest in proceedings entitled, "In the House of Representatives of the United States," when there were not any such proceedings in the House of Representatives of the United States, those people up there naturally were indignant, and the newspapers having published the facts, as the record shows, the men appeared and obeyed the subpoenas but refused to respond to their names. But I should not be prejudiced in regard to the merits of this case, no presumption should be taken against me and no presumption should be indulged as to how those boys voted, on account of their standing up for their strict legal rights. Every presumption is against Mr. Wickersham for having committed an abuse of process, in contempt of the House of Representatives, which he did, and there is no excuse for it.

Now, that was the situation. He was not bound or affected by the lapse of time. There was no time that he could not have commenced a contest, as long as he commenced it within 30 days after I was declared elected. When I was declared elected, on the 14th of June, then his 30 days commenced. He had to serve me within 30 days of that time. He had to take notice of that election, but prior to that no statute ran against him whatever.

Not only that, but you gentlemen all know that every section of the revised statutes relating to contested elections is directory, and not mandatory. Congress never had power to pass a mandatory statute with reference to a contested election, because each House of Congress, by the Constitution of the United States, is the judge of the elections, qualifications, and returns of its own members. Of course, Congress can not pass a law in contravention of the Constitution. The House can override the statute in that respect, because they are the supreme judge of their own membership at all times.

Now, that is the way this case came up. That was the situation of Mr. Wickersham. He has given you gentlemen a learned dissertation on some general legal principles which affect Alaska, about which there is no dispute. It amounted substantially to a statement that Congress is supreme over Alaska, and the legislature is subservient to Congress, which we all recognize. Congress has plenary power over the Territory, and can abolish the legislature. That is an interesting statement to school children, but everybody knows that Congress can abolish the legislature by the same power that enabled it to create the legislature. It can sell Alaska, just the same as it bought it, or admit it as a State. But I do not see any advantage to be gained by his display of any amount of knowledge. I can not understand his purpose unless, having told you several things that were true as to the law, he hoped that you would take his opinion as to the law when he was wrong.

Now, I can not find out at all times just what he thinks about the law, because when I ask him to give me an expression of his

views of the meaning of a statute he acts as if I was trying to get him into a trap. Here is the law that he wrote himself, which gave Alaska a full territorial form of government, the act of August 21, 1912. If anybody knows how to construe that law, Mr. Wickersham ought to because he is the author. The other night he was reading from this section 416 of the compiled laws of Alaska—

The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

When I asked the judge, as you remember, whether that meant the general laws of the United States or the laws of the United States relating to Alaska—and we were discussing at that time the right of the legislature to amend the election law—would he answer me? No. He said he would reserve his opinion on that. He was not willing that you gentlemen would have his opinion on that unless he knew how it would serve his own purposes.

Now, there is but one answer to that question. I was willing to give my opinion on it, am now, and on any other question of law. I expect to be bound by the law and expect you gentlemen to ascertain what it is. If I am wrong in my opinion I think the sooner we find that out the better. Now, that means the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws—that means the general laws of the United States. Mr. Wickersham knows that. It can not mean anything else.

The CHAIRMAN. Just one question there. Would that also apply, with your definition of it, not only to the general laws of the United States, but the laws of the United States as applied to Alaska?

Mr. GRIGSBY. No, sir; not as applied only to Alaska.

The CHAIRMAN. I do not mean that, but would your interpretation of the statute, if it applied to the general laws of the United States, with that broad construction, would that include the laws of the United States applying to the Territory of Alaska?

Mr. GRIGSBY. It would include all the general laws of the United States which apply to Alaska as well as the United States, but not the laws relating to Alaska alone. Here is the reason for it. Section 410, "That the Constitution of the United States and all the laws thereof, which are not locally inapplicable, shall have the same force and effect within said Territory as elsewhere in the United States." This means in effect that unless they are locally inapplicable. They never were in effect in Alaska when locally inapplicable. [Reading:]

That all the laws of the United States heretofore passed, establishing the executive and judicial departments of Alaska, shall continue in full force and effect until amended or repealed by act of Congress.

Those are the laws establishing the usual executive and judicial departments and creating the branches of the Government of the Territories.

Mr. HUDSPETH. Let me get your idea, if it does not bother you to ask questions.

Mr. GRIGSBY. Not at all.

Mr. HUDSPETH. What is your judgment as to whether or not a special law passed by Congress applying to Alaska, a State statute or Territorial statute, could be passed in contravention thereof?

Mr. GRIGSBY. Certainly.

Mr. HUDSPETH. It can?

Mr. GRIGSBY. By Congress.

Mr. HUDSPETH. Suppose Congress passed a special act and the territorial legislature passed a law in contravention of that?

Mr. GRIGSBY. They can not do it. No, but they can pass acts in contravention of all laws passed prior to the date of this enabling act, as I shall show in a minute. [Reading:]

All of the laws of the United States heretofore passed establishing the executive and judicial departments of the Government shall continue in full force and effect until amended or repealed by an act of Congress.

So we can not interfere with the judiciary, the governor, or the surveyor general. [Reading:]

That except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature.

Now, that is perfectly plain. So we have the power——

The CHAIRMAN. What are you reading from, the organic act?

Mr. GRIGSBY. The organic act. So the legislature has the power to amend all the laws now in force, that is on the date of the passage of this act, by Congress, except those where limitation is contained in this act. Now, then, follows the limitation. [Reading:]

Provided, That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws of the United States; or to the game, fish, and fur-seal laws, and laws relating to fur-bearing animals of the United States applicable to Alaska; or to the laws of the United States providing for taxes on business and trade; or to an act entitled "An act to provide for the construction and maintenance of roads." * * *

There are certain specific laws that we can not amend. We can not amend the general laws of the United States, although they may apply to Alaska. But we can amend all the other laws of Congress. For instance, our civil code, which is very complete, the code of civil procedure, and the criminal code, the code of criminal procedure, and other special laws passed for Alaska which we are not prohibited from amending. So in section 416 of this act—I do not know what section it is there—it says the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, and that means the general laws of the United States, because we can pass laws inconsistent with the laws relating to Alaska.

The CHAIRMAN. Just read that again.

Mr. GRIGSBY (reading):

That except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature.

That is the language.

The CHAIRMAN. Now, is it your contention that that gives the legislature the right to amend or change a law that would conflict with the laws of the United States that applied specifically to Alaska?

Mr. GRIGSBY. Yes; it gives the legislature authority to amend any law of the United States that applies to the Territory of Alaska, provided that it is not within any of the limitations or within the organic act itself.

The CHAIRMAN. Then why should Congress pass a law relative to the Territory of Alaska if the Territory of Alaska by its legislature could immediately repeal it?

Mr. GRIGSBY. I do not say subsequent laws, but "laws now in effect." It says except "as herein provided laws now in force in Alaska." They are given authority to amend, alter, or repeal those in force at the time of the passage of this act. Now, of course, Congress might to-morrow take away the power to do that, or it might pass an act to-morrow and say, "Hereafter no divorces shall be granted in the Territory of Alaska unless the plaintiff has resided there for six years." We could not amend that. This act was designed to enable the legislature to amend and repeal the existing laws, which were a great conglomeration of laws, an obscure set of laws, and probably Congress thought it would relieve them of the bother of that. We have a code handed down patterned after the Oregon laws. For a time the Oregon laws were in force in Alaska. Finally we had a set of laws, and they were finally all codified in this compilation of 1913. The act of August 24, 1912, gives us the territorial legislature—and this very act authorized this compilation of 1913.

Now, everything in this compilation can be amended. The legislature is not expressly forbidden from amending or repealing. But anything subsequently passed they are not given the power to amend. It would be absolutely absurd for Congress to pass an act to-morrow, and we just call a special session of the legislature repealing it, with the proposition staring us in the face that Congress has plenary power. But we do have the power to do exactly what it says we can, and there is no other construction possible. "Except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature." And then it says, "The authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws," etc. So, of course, it gives us the power.

Mr. HUDSPETH. At that time you had laws which had been passed by the territorial legislature?

Mr. GRIGSBY. No; we did not have any legislature at that time. This is the act creating the legislature.

Mr. HUDSPETH. Then, what authority of law did you have there at that time?

Mr. GRIGSBY. Congress, that is all.

Mr. HUDSPETH. All the laws passed prior to the organic law were passed by Congress?

Mr. GRIGSBY. Yes; Congress was the legislature of Alaska. When they legislated for Alaska alone they were sitting as a legislature for Alaska.

The CHAIRMAN. Did you have any other form of laws except enactment of Congress?

Mr. GRIGSBY. No; we had no legislative body. We had municipal law, city ordinances.

The CHAIRMAN. Did you follow the law the Territory was under at the time it was admitted, had that been followed for any time I mean after it had been purchased by the United States?

Mr. GRIGSBY. What particularly do you refer to?

The CHAIRMAN. I was not referring to any particular one, but was there any common law?

Mr. GRIGSBY. The common law was in force in the Territory of Alaska and all the laws of the United States relating to customs, commerce, and navigation were extended by statute, by Congress, to Alaska.

The CHAIRMAN. At the time of its purchase?

Mr. GRIGSBY. Some time after that. 1868, I think it was.

Mr. CHINDBLOM. Were there any remnants of the Russian law in force?

Mr. GRIGSBY. No. There was not any law of God or man north of Fifty-three for a long time. That is an old saying, and then Congress extended the laws of the United States to Alaska. They had put us under the Oregon laws in 1884 and gave us a code in 1899, criminal code, and in 1900 a civil code and in 1912 a legislature.

Mr. CHINDBLOM. When was Alaska created a Territory?

Mr. GRIGSBY. 1884.

Mr. CHINDBLOM. Prior to that time——

Mr. GRIGSBY. It was an unorganized Territory.

Mr. CHINDBLOM (continuing).. It was a territory belonging to the United States, but was not in the technical sense, or the legal sense, or the governmental sense, a Territory?

Mr. GRIGSBY. No; it was just a possession, as I understand it. That was prior to the gold discoveries, and that was prior to any very extensive fishing, although for commercial purposes that had been going on to some extent for some time.

Mr. CHINDBLOM. Do you happen to know what was the first action of Congress relating to the establishment or the recognition of any law in the possession known as Alaska?

Mr. GRIGSBY. Probably 1868.

Mr. CHINDBLOM. What I was getting at is this: This section 3 of the act creating the legislative assembly of the Territory of Alaska refers to laws now in force in Alaska. You have read that provision that "Except as herein provided the laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

Then there is a proviso making exceptions to that power.

Mr. GRIGSBY. Yes.

Mr. CHINDBLOM. Now, the laws "now in force," as recited in that section, must have come through acts of Congress prior to this?

Mr. GRIGSBY. Prior to 1912.

Mr. CHINDBLOM. The act of 1912?

Mr. GRIGSBY. Certainly.

Mr. CHINDBLOM. I think you said that the laws of Oregon were extended; the laws of the Territory of Oregon?

Mr. GRIGSBY. They were extended to Alaska, and we were acting under the laws of Oregon for some time.

Mr. CHINDBLOM. By act of Congress?

Mr. GRIGSBY. By act of Congress. And then in 1900 we got a civil code, and in 1899 a criminal code. Prior to that time we were under the laws of Oregon.

Mr. WICKERSHAM. By act of 1884.

Mr. GRIGSBY. By act of 1884. I could not tell you the date of the act extending the laws of the United States to Alaska, but it was a long time ago. What I am getting at is this, that if there is any reason why the legislature of Alaska can not amend the election law passed by Congress it is because it happens to be continued in force in this organic act.

Now, what was the law relating to Alaska passed in 1906 which prescribed the qualifications of electors in Alaska, and there is no express prohibition on the legislature from amending that. That law is the subject of legislation passed in 1906. It is not one of the laws the legislature is expressly forbidden to amend, and an amendment thereof would not be inconsistent with the general laws of the United States because it relates to Alaska alone.

Now, I do not want to be put in the attitude of switching my position. I did advise the governor that the legislature was without power to change the qualifications of voters in Alaska, because of this organic act, which continues the act of 1906 in full force and effect. That was the reason for it, as Judge Wickersham explained, and this is what I am going to call your attention to now. Here is an act in 1906 relating to elections. In 1912 Congress creates a legislature and says that the legislative power shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, meaning the general laws of the United States. And in another section it says that the "laws now in force in Alaska" may be repealed by the legislature except certain laws mentioned. That election law was one of the laws in force. In fixing the date of the election for members of the legislature, Congress said the "qualifications of election officers, the supervision of elections, the giving of notices thereof, the forms of ballots, the register of votes, the challenging of voters, and the returns and the canvass of the returns of the result of such election for members of the legislature shall be the same as those prescribed in the act of Congress entitled 'An act providing for the election of the delegates of the House of Representatives from the Territory of Alaska,' approved May 7, 1906."

They had to fix some method of conducting the first election, and so they just said it shall be just the same law as you have been electing a Delegate under, and the election was fixed for the first Tuesday after the first Monday of November. So it evidently occurred to Mr. Wickersham that there was no use of having two elections a year in Alaska, so he runs in another section here—section 424—I do not know what section it is there—

Mr. WICKERSHAM. Section 17.

Mr. GRIGSBY (reading):

That after the year 1912 the election for Delegate from the Territory of Alaska, provided by "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, shall be held on the Tuesday next after the first Monday in November in the year 1914, and every second year thereafter on the said Tuesday next after the first Monday of November—

instead of August. That is the only change. [Reading:]

And all of the provisions of the aforesaid act shall continue to be in full force and effect and shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein.

Now, did that mean forever? There is something that is no part of or related to the organic act which created the legislature and defined its powers. It is relating to the change of date of the Delegate's election, and as a precautionary measure he added to that clause that it should be conducted along the lines theretofore conducted under. But here it is put into an act creating a legislature and defining its powers, which by the act extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. Now, did he intend that the legislature should never have any power to fix the qualifications of its voters, or did he intend that for the first election thereafter they should have an election law, which was the same as the one they had before, and thereafter the general provisions governing the Territories should apply? In every Territory ever created the legislature had the power to fix the qualifications of its voters after the first election, except Alaska, and I certainly think, if he had thought there was any doubt about that, Mr. Wickersham, in drawing up an act in which he was attempting to give the people self-government, would have extended to them the right to fix the qualifications of their voters and to adopt the Australian ballot system if necessary.

Prior to the passage of this act we never had but one officer to elect in Alaska. That was the Delegate; and you could go and write your choice on a piece of tanbark or a sea shell, and say, "For Delegate to Congress, John Doe," and it was a good legal ballot, and this contestant contends that, because in changing the date of this election he continued in full force and effect the election laws passed in 1906, that forever up there in this country, that is "rampant with fraud," "infested with the crookedest Democratic machine ever known to history," we shall have the right to vote on tanbark and sea shell. Do you think he intended that?

Now, I do not know. This is in the organic act. It does not belong in the organic act. Supposing that on the same day in a separate act they had changed the date of the Delegate elections and said, "The laws heretofore passed covering the conduct of Delegate elections shall continue in force," and then the power is given the Territory in the organic act over all rightful subjects of legislation, and they undertook to legislate on their own elections for their own members of the legislature, would you say that they did not have the power? Now, the only objection to their doing it is because the election law is continued in force in the organic act, which I have called the constitution of Alaska. That is not entitled the constitution of Alaska, but it is an act which creates a legislature and defines their powers and is a kind of limited constitution of Alaska, a kind of enabling act.

Mr. HUDSPETH. Let us see if I get you correct. You state it is a fact that in all laws passed by Congress creating the organic act for a Territory that it gives the power to the Territorial legislature to fix the qualifications of electors and the manner of holding elections?

Mr. GRIGSBY. Yes; except Alaska. With certain limitations as to qualifications of voters, such as that they must be citizens of the United States, but, generally speaking, they are given the power.

Mr. CHINDBLOM. In a number of these other Territories Congress gave the right of suffrage to declarants, as I recall it.

Mr. GRIGSBY. At the first election. That is section 1859, Revised Statutes, I think. [Reading:]

Every male citizen above the age of 21, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

Section 1860. [Reading:]

At all subsequent elections, however, in any Territory organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21 years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

I do not mean to bring this in in this connection. [Reading:]

Third. No officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

Now, I will argue that point later, but Alaska is the only Territory ever known organized to the original assembly of which was not extended the right of changing the qualifications or of establishing the qualifications of voters, subject to those very reasonable limitations; so that if they can not do it, it is because a section of the organic act, which is foreign to the subject matter of the organic act, incidentally prevents them from doing it, and that is a question that I just submit to the committee for its consideration, because if it were decided that it was not the intention of Congress to hold us forever to that inadequate election law—then the Territorial election law would be good. Under the congressional law there is no secrecy of the ballot; you can take a ballot in your hand and hold it up in the air to show anyone interested how you are voting and put it in the box—it is the oldest style of election or ballot there ever was. I can remember when I was a very young boy back in South Dakota after the State was organized they had three elections for the capitol, two elections for temporary capitol, and one for permanent capitol, and I have seen money stacked up on the butcher-shop counter, silver dollars, and I have seen men file in there and the money given to them and ballots, and they marched back up to the polls this way [indicating] with the ballots held in the air. And every candidate had his bank roll there.

Under the election law which contestant provided for the “crooked bunch” of politicians that he says are hounding him to death up there, they can do that forever unless Congress changes the law, or the legislature changes it, and the legislature did it. Did it have a right to do it? If it had a right to do it then you can not throw those votes out because they are cast in the wrong precinct, because of the change in qualifications of electors to meet the public neces-

sity fixing it so that a man could vote in any division or any place in the division, which was the division of his residence, and the reason for that was this——

Mr. HUDSPETH. That is under the Territorial act?

Mr. GRIGSBY. That is under the Territorial act. The reason for that is this: All Alaska has a more or less transitory population. The miners are engaged in two kinds of mining in a great portion of the Territory, summer mining and winter mining. Some of the mining done in summer is the same as is done in winter, but some is surface mining and some underground mining, and they will leave one part of the district they are in to go to another part in the spring and fall of the year, and they are at those times of year more or less in transit all over the country.

The reason for the legislature passing that act was because so many people were disfranchised for the reason that they had to be in their home precinct on the day of election. They ought not to be required to be there. The reason you have that precinct law in the States is because you have so many precincts that are close together and you have such perfect transportation facilities that a man could get a train and repeat for dozens of times. But there are only two or three places in Alaska that I recall that a man can repeat. It is little likely to be done and that is the reason that this 30-day precinct residence is unnecessary. That is why the legislature changed it. That is the way it should be. That is the way the people want it, and if they can not have it that way, it is unfortunate. The power should be extended to them to fix the qualifications of their voters up there if they are fit for self-government at all.

Mr. HUDSPETH. You say that the Territorial law gives them the right to vote in any precinct in that district?

Mr. GRIGSBY. Division.

Mr. HUDSPETH. The division is the district?

Mr. GRIGSBY. It is a judicial division. There are four judicial divisions.

Mr. HUDSPETH. Are they what we call districts in this country?

Mr. GRIGSBY. There is nothing exactly similar up there. They are not political entities at all.

Mr. HUDSPETH. In our State all men can vote for a district office in any part of the district. He can not vote for a county office except in his own precinct where he lives, but he can vote for a district office in any precinct in the district where he happens to be, or for a State office in any part of the district, or for a Federal office. That is my recollection of the law down there unless it has been changed.

Mr. CHINDBLOM. Give an instance of a district officer in your State.

Mr. HUDSPETH. Well, for instance, take a district judge, as we call him. His district may be composed of five counties, and my recollection of the law is, unless it has been changed, that a man can vote in any one of those counties for a district judge that he happens to be in. Then we have got down there an absent voting law. For instance, if you are a drummer and you live in the eastern part of my congressional district, which is only 600 miles from the western end, you can vote in the western end. Now, you can leave

your ballot at your home 10 days before election. So on that perhaps this might be stated that you could vote there for a district office in any part of the district.

Mr. GRIGSBY. Under the Congressional law in Alaska there was but one office to be voted for when it was passed, and that was delegate to Congress for the whole territory of Alaska.

Mr. HUDSPETH. What was the size of those divisions approximately?

Mr. GRIGSBY. There are four of those divisions in Alaska. Alaska contains approximately 600,000 square miles.

Mr. HUDSPETH. Under that Territorial law, if a man lived in Division No. 1, he could vote in any precinct in Division No. 1 on the day of election?

Mr. GRIGSBY. Yes; if he had been there 30 days.

Mr. HUDSPETH. Where?

Mr. GRIGSBY. In the division.

Mr. HUDSPETH. In the division?

Mr. GRIGSBY. Yes. Under the Congressional law he had to be in the precinct 30 days.

Now, there are four divisions up there, with a Federal judge in each division, and he appoints the United States commissioners wherever necessary, wherever he wants to establish a recording district, on account of the necessities of the case. There are no counties. He defines the boundaries of the recording districts. The United States commissioner is ex officio recorder of the district, and he divides his recording district into voting precincts at election time and appoints election judges, not more than two of whom shall be of the same political party. But it would be better for the people of Alaska, for the exercise of the right of suffrage, if a man could vote anywhere in his own division, if he had been there 30 days.

Mr. HUDSPETH. If he had been in the division 30 days and in Alaska for a year?

Mr. GRIGSBY. In Alaska a year. In 1916 everybody knew about this new law which was passed in 1915, and there was no question raised as to the right to vote anywhere in the division.

Mr. HUDSPETH. In the contest of 1916 between Judge Wickersham and Mr. Sulzer, was any such question as that raised?

Mr. GRIGSBY. There was not.

Mr. HUDSPETH. Was there any such voting as that?

Mr. GRIGSBY. Yes; in fact the Territorial law was recognized universally, and because there was no question raised about it, it was recognized. Now I will show you why.

Mr. HUDSPETH. What I meant to ask——

Mr. GRIGSBY. The territorial law was universally followed. That is in the record, sworn to by myself substantially as follows [reading]:

I was at Nome, Alaska, on election day. Navigation closes at Nome about the 1st of November, but that year a storm came and detained the vessels in the open harbor for two weeks, and for two weeks they could not take the passengers out, so that everybody was tied up in town. At that time of the year many people go out to the States. From the small towns they come down to Nome to get the boats. All were there, and they all walked up to the polls and very largely voted for Judge Wickersham.

Mr. HUDSPETH. Was the question raised in that contest?

Mr. GRIGSBY. It was not. I want to show that. I want to say this, however, that the present Republican candidate for delegate to Congress, Mr. Dan Sutherland, a friend of Judge Wickersham, got into our division on the thirtieth day before election at Marshall City and was down in Nome on election day and voted under the territorial law. Nobody raised any question about it at all. I will show what happened with reference to that in the last contest from the opinion of the committee as contained in this *Wickersham v. Sulzer* contest proceeding. Now, here is what the committee says in their opinion [reading]:

While not connected with this or the other main features of the case are the votes of Louis Klopsch, who was not a resident of the precinct in which he voted, and Julius Forsman, of foreign birth, unnaturalized, both of whom, according to direct and undisputed testimony, voted for Wickersham. These voters should not have been received or counted, and are accordingly deducted from contestant's vote.

That is in the printed record, page 240 and 261.

Now we turn to page 240 of the printed record.

Mr. HUDSPETH. From what are you reading?

Mr. GRIGSBY. From the opinion of the committee in the last contest.

Mr. HUDSPETH. 1916.

Mr. GRIGSBY. Yes. The vote of Louis Klopsch was thrown out because he did not vote in the precinct in which he lived, according to the committee. Now, here is what the testimony was [reading]:

Q. Do you know whether Louis Klopsch, who voted for James Wickersham, as delegate to Congress, at the Sour Dough precinct at the election held there on the 7th day of November, 1916, was a resident of the third division of the territory of Alaska for 30 days next preceding the date on which he voted?—A. He was not.

Now, the committee on elections, you see, treats division as synonymous with precinct, but the question, I will frankly say, was not raised. The proofs show he did not reside in the division 30 days. The committee throws the vote out because, as they say, the evidence does not show he resided in the precinct. You see that the territorial law was recognized by the examiners, by the witnesses and by the committee. I do not claim that that is an opinion that is binding, but that is the only way that the territorial law entered into that case with regard to 30-day residence, the only way that I know of. That point came in in no other way unless it was discussed in Judge Wickersham's brief.

Mr. WICKERSHAM. Very fully.

Mr. GRIGSBY. It may have been. That was the only way it entered into the case. But that would not justify us in saying that that point was in issue in 1916, because that was the extent to which that was in issue. The only reason that perhaps the legislature can not change the qualifications of electors is because that provision continuing the act of 1906 in force happens to be in the organic act, and the other question relating to the scope of the act with reference to its title. I have not examined the authorities with reference to that particular subject on that question. There is great variety of precedent in the courts when you attempt to decide whether a title of an act is broad enough to include every subject in the body of the act. Here is an act to provide official ballots

for the Territory of Alaska, and then follows a general election law. It may be that that will be fatal in that connection.

Mr. CHINDBLOM. Where is the provision in the organic law with reference to the qualifications of electors? You have referred to it before, but I just want to find it.

Mr. GRIGSBY. You mean the act of 1906?

Mr. CHINDBLOM. 1912.

Mr. WICKERSHAM. Sections 5 and 17. You mean extending the qualifications of voters with reference to members of the legislature?

Mr. CHINDBLOM. Both. I see it here, "with reference to members of the legislature"; it is in section 5, and the other is section 17.

Mr. GRIGSBY. You have got the sections of the compiled statutes, but the paragraphs of the organic act are not there.

Now, there are those considerations with regard to this territorial law for you gentlemen to consider, and I want you, in considering them, to remember all the time that the attorney general of Alaska is on record against all the suggestions I am bringing to your attention now. As Judge Wickersham says: In my opinion I have stated in advices to the governor, and in directions to the election officers, that we could not change the qualifications of voters. But, gentlemen, it would be a great pleasure to me to be overruled. I will not complain at all. I won't feel humiliated about it. If I was wrong, I want to find out in this case, and incidentally save a few votes, perhaps. I do not know that the change will be very much on account of that particular question.

Now, there is also this to be said: Judge Wickersham, in the election of 1916, conformed to that Territorial act in every respect. Under the Territorial act, before he could get his name on the official ballot he had to go and get a petition signed and file it on or before a certain date. He was the present seated Delegate to Congress at that time. If that election law was wrong, he ought to have told the legislature so. He said the other day that Dan A. Driscoll introduced the bill. Dan was one of his most ardent supporters, and I understand that the judge guided that legislation during that session to some extent, and had a considerable influence over it. But they attempted to pass a new election law, and they passed it, and the election of 1916 was conducted under it. This organic act provides, section 26, which is the last section [reading]:

That all laws passed by the Legislature of the Territory of Alaska shall be submitted to the Congress by the President of the United States, and if disapproved by Congress they shall be null and of no effect.

If the judge knew that the Legislature of Alaska had exceeded its powers in passing an election law that was void, why did he not have it disapproved? He was sitting here in Congress on the day it was passed in 1915, and he goes and runs under that law in 1916 and says nothing about it, receives hundreds of votes under that law, would not have been elected except for that law, according to the undisputed evidence in this case, comes down to Congress in 1916 and does not say anything about it, and comes down here in 1917 and sits until the 4th of March, 1917, and does not do anything to call to the attention of Congress that it has passed a void act, and during all of this time the people of Alaska were acquiescing in this act, and I believe under the circumstances that Congress ought to approve it by the action

of this committee, subsequently concurred in by the House, because there is such a thing as custom ripening into law after long acquiescence, particularly in the case of the judge. Here is a man who has benefited by it, whose duty it was to have had it disapproved, but who sat idly by and did not open his head until this time, and who ran again in 1918 under it, sat in Congress up until March 4, 1919, and never got it disapproved. Now, it has been in effect since 1915. We have had two elections under it.

The only man who ever disapproved it was myself, when I was called on for advice. When the legislature passed an act in 1917 the senator from the fourth division, Mr. Dan Sutherland, who is now a candidate for Delegate to Congress on the Republican ticket, introduced a bill and made it my duty as attorney general to prepare the election forms for all elections—general elections and primary elections. He had two motives in doing that. He wanted to have the forms right and he wanted to put upon me some work, and his action showed that he trusted me, and nobody up to this time has found any fault with any form I prepared under the law of 1915. This Territorial act, section 22, necessitates one of the forms I had to get up. This duty was taken away from the clerk of the court and put on me. [Reading:]

The clerk of the court shall provide each polling place with a book to be known as the registration book, on the first page of which shall be printed the qualifications of the voter, as follows: "Any person of the age of 21 years or more who is a citizen of the United States who has lived in the Territory of Alaska one year and in the judicial division in which he or she offers to cast his or her vote 30 days immediately preceding such election shall be entitled to vote at all elections held therein." etc.

There is the Territorial statute, and I am the attorney general, an officer created by the legislature, and the law says that I have to prepare that form, and I did it, but I put under that on the same page a note calling attention to the fact that that was in conflict with the congressional law and advising that the congressional law ought to be complied with. I did not want to father at that time that kind of direction, because I did not think it was right. I did not want to refuse to comply with the directions of the statute, so I put the note on calling attention to what I thought was the law.

MR. O'CONNOR. Did the election of Delegate fall within the provisions of the congressional act or the act of the Territorial legislature?

MR. GRIGSBY. That is section 17 of the organic act.

MR. O'CONNOR. I thought the prohibition did not include the election of a delegate and that therefore the Territory of Alaska had a right——

MR. GRIGSBY. The prohibition did not include it. There is no prohibition on the legislature from passing any rightful legislation, or legislating on any rightful subject of legislation.

MR. O'CONNOR. Did you know the law when you wrote that opinion as you know it now?

MR. GRIGSBY. I do not know whether I did or not.

MR. O'CONNOR. If the legislature had the power to amend and alter, I do not see anything that prevented it. I did not understand your opinion.

MR. GRIGSBY. I am in a position where it is difficult to explain myself, Mr. O'Connor. My printed opinions are thrust on me, and

I certain construed the law as I understood it, and I do not know but what I was right. But when I heard the discussion of the subject by Judge Wickersham the other night, it suggested those ideas to my mind which I have presented to you and I do not think you are bound by my opinion, and as I said before I would be delighted to be put right if I am wrong.

Mr. CHINDBLOM. You are in good company. I have known supreme courts to change their minds. I might change my mind if I was a judicial tribunal which was disposing of this case.

Mr. GRIGSBY. I might do so myself.

Mr. CHINDBLOM. I do not mean to say anything with reference to this case, but we know supreme courts do change their minds.

Mr. O'CONNOR. The West Publishing Co. have a note: "Do not follow the decisions of the Louisiana Supreme Court. They judge every case upon its own peculiar tone and color."

The CHAIRMAN. We are taking up the gentleman's time a good deal. I have no objection to its going on, but we do not want him bothered.

Mr. GRIGSBY. You gentlemen, of course, realize that you are called on for opinions when you do not have the benefits of anybody else's views, and you have but little time to give a decision. I may have been wrong in that opinion, but I gave an opinion as near right as I could. It was my desire that the law be complied with whatever it was. I thought at that time that a man must vote in his own precinct. Now, I have said everything that I care to say on the subject, because those considerations did not occur to me at that time which I mentioned to you gentlemen to-night. That is all I care to say on that question. It ought to be determined and determined correctly. It does not make a great deal of difference in this case. I think myself that probably Mr. Wickersham will lose more votes by insisting that this 30 days' precinct requirement be adhered to than Mr. Sulzer would. But it is before you gentlemen.

Now, the records in this case of all the election districts in Alaska include the records from Fairbanks, and they will show you that 31 voters voted outside their precincts, 31 voted in the Fairbanks precinct registered from all over the country. Some were subpoenaed and said that they thought that that was what they had a right to do. And in more than one precinct in Alaska, more than one town, an agreement was made such as the judge blames me for, to the effect that they would not challenge on that ground. They did not agree, as he led you to believe, to vote illegal voters; nobody conspired to procure illegal voting. But in Cordova, where I was, there were a lot of people coming in from towns up toward Fairbanks. It was at that time of the year when they were getting down there to get their boats and get started out, and there was so much challenging that it looked as if everybody was going to get into a general row, and they met up in Mr. Galen's office and discussed that. He said, "What do you say if we do not interpose any challenges, but let them vote as they come?" They did it there and at other towns. At Charcoal Point they agreed on the same method, and it worked as well for one side as the other as far as I have been able to find out. Mr. Wickersham blames me for not stopping it. It was not my election. He blames me for it, and our national committeeman—Donahue—blames me for it. I had nothing to do

with it. They say we lost Cordova by it. Wickersham got all of those illegal votes. Of course, I get the blame, no matter what I do.

Now, I am going to pass to another subject. These discredited and rejected ballots are not here before you. Mr. Wickersham states in his brief that the first thing that would be done would be for the committee to insist on them being gone over here and this fraud exposed. He makes much of it in his brief.

The judge criticized me severely the other night for bringing the Riggs family into this case. He says that he did not drag them in; that I dragged them in out of whole cloth, and make him accuse them of crimes, and then roast him for it. Now, I will show you that the record justified my action, and I am going to read you what he says in his brief and show you what justification I had for putting in that extract from the newspaper which published Mr. Wickersham's attack on Mrs. Riggs.

On page 19 of his brief, Mr. Wickersham says [reading]:

The method adopted by the partisan canvassing board in canvassing the returns of the 1918 election for delegate from Alaska was furtive and unfair and suspicious; whether it was criminal may be better judged if an examination of the 40 or 50 so-called rejected ballots shall disclose that they are in the same condition of marking they were when cast.

Now, here is another statement [reading]:

If the canvassing board had been permitted by Mr. Grigsby to make an open, public examination of those so-called rejected ballots, and had canvassed and counted them, as it did under the instructions of Mr. Grigsby, as attorney general, in the 1916 canvass, this contestant had the plurality and not Mr. Sulzer.

There is no evidence to back up that statement. Now, he says [reading]:

Those rejected ballots remained in the possession and control of the partisan Democratic governor, who is accused in this record of election frauds, both in 1916 and 1918, for almost a year, and we are told no one but he has seen their contents; the ballots are marked generally with a lead pencil; the marks are easily erased and changed; neither contestant nor his attorney was permitted to examine them at any time—we fear the worst, but still insist that they be now inspected, canvassed and counted by the committee, and fairly credited to the candidate for delegate according to the apparent intention of the voter, if that fair intention can be still determined from the face of his rejected ballot.

That is after they had been in possession of the governor for a year, who was accused of election crimes in this record in 1916.

Now, what crimes do the records show he was accused of in 1916? The crime of allowing his wife to vote in that election after she had got the advice of the United States District Attorney up there that she was entitled to vote, and he was never accused of any other crime, fraud or misconduct in connection with the election of 1916 except that Mrs. Riggs had not been in Alaska at that time for more than six months before election.

The district attorney advised Mrs. Riggs that her residence followed that of her husband, and that she was a legal voter, and she voted. Now, when this contestant seeks to make you of his own opinion that these ballots are unsafe in the possession of the Governor of Alaska, because he has a criminal record, haven't I a right to show you what crime he was accused of? Is that loading my brief, as he terms it? That is the first time I had an opportunity to know that any such accusation was going to be made when he filed his brief in which he makes it, not only in this case but in other paragraphs of

his brief. And in one part of his brief he would even sentence them to a term in the penitentiary. Oh, yes; you do. I will read it after awhile when we get to that subject. Most of our judges up there, a large part of the Army organization, and the Governor of Alaska, are consigned to various crimes and terms of imprisonment by Mr. Wickersham, in his brief. If you gentlemen have read it, you have noticed it. If you do read it, you will notice it. So that is the reason that I have a right to call attention to the purpose he had in making that accusation, to present himself here in the light of an abused man, who has been subjected to all kinds of election frauds by a bunch of "criminal officials" and gain sympathy for his case. And in the case of Governor Riggs it is all because his wife voted in 1916 on the advice of the district attorney. They went ahead and tried to indict her for it, his agents, his attorney of record in this case. His letters are in this record, and the record of the 1916 contest, and his friend sitting here in this room if I am not mistaken—are you Mr. Elliott?

Mr. ELLIOTT. Yes.

Mr. GRIGSBY. When Tom Riggs was nominated for governor, went over here to the Committee on Territories of the Senate and protested his confirmation on the ground that he committed a crime in voting his wife in Alaska, and the committee upon receipt of a wire from the United States attorney at Fairbanks that he had so advised Mr. Riggs, ended their deliberations and unanimously confirmed him. That is on record over there.

And Judge Bunnell, the judge who appointed the commissioner who created the 40-mile precinct is being held up over there in the Judiciary Committee by this man for election frauds which he is accused of in this record, which do not amount to the snap of your finger. But he has declared war on us up there. And consistently with his attempt to hold a seat in Congress, he is trying to hold up all Federal appointments. Now, I want you all, gentlemen, to scrutinize his accusations, and see the purpose of them. Judge of the foundation or lack of foundation he has for those accusations and determine how much weight you give any of his statements when he asks you to take his word as to facts or as to the law of this case, and you will have to study this case to come to a proper conclusion in that regard.

Now, let us see why have not those records been brought over here. I have found no fault with them. All this hullabaloo about tampering with the ballots, that he would have been elected if they had counted these ballots——

Mr. HUDSPETH. I understood that they were here.

Mr. GRIGSBY. I am not contending that they are not here. I am wondering why Judge Wickersham did not want them here. I read several opinions before the canvassing board had canvassed the result of the 1918 election, and I make this statement, that there is no theory of law applicable to the powers and duties of the canvassing board of Alaska that they could have followed which could have resulted in giving the certificate of election to Judge Wickersham. If my opinion had been rendered exactly the opposite, it would not have changed the result, as far as establishing who had the plurality was concerned. As they found the result, Mr. Sulzer had a plurality

of 33 votes. Now, you all know that a canvassing board can not go into questions of fraud. Everybody concedes, the judge will concede that the canvassing board could take no note of the fact that there was not an election at Nushagak. The canvassing board could not throw out Forty-Mile. The canvassing board could not discover that the election was held a little before 8 o'clock at Cache Creek.

The CHAIRMAN. Have you not passed that station anyway?

Mr. GRIGSBY. What station?

The CHAIRMAN. The question of whether they should have canvassed or not is now not material, because the question of the ballots is up to the committee, as I understand it.

Mr. GRIGSBY. Yes; certainly, but I want to explain my attitude. Now you see, Mr. Chairman, Mr. Wickersham states in his brief that if it had not been for my opinion the canvassing board would have had to give him the certificate, and that when I found that by the method they were adopting he was gaining I butted in and made them adopt an opposite rule, and I went contrary to my advice given in 1916, which would put me in the attitude of switching my advice on election matters to suit the occasion, and not to be trusted, gentlemen, and I am a witness in this case, and I am trying to convince you that in some matters I am acquainted with what the law is. I want to explain that right. In 1916 and 1917 when we canvassed the result of the 1916 election, I was the first attorney general, and early in the canvass I was sent for and asked to come up to the board and they had opened up the returns from a precinct over at Douglas, Alaska, and they showed me a ballot which had been rejected by the judges of election over at Douglas because the cross was on the right-hand side instead of in the square, and they asked me if they had a right to count that.

I said, "Why, yes; that ought to be counted. You want to count that because that shows the intention of the voter," or words to that effect. And that is the record in this case, taken from the minutes of the canvassing board, from the proceedings there at that time. Now, that was an opinion given by me offhand—a sort of an opinion—and I think everyone of you gentlemen would have answered the same way: I was not an expert on election law. I had always running in my mind the theory that the apparent intention of the voter was what governed, and that was the general drift of the old decisions, and the question of the powers of the canvassing board was not what was most prominent in my mind at that time. It was mentioned; but what I was thinking of was the right that they had to canvass that particular vote—whether that was a legal ballot or not.

Mr. CHINDBLOM. Let me ask you this question: Did the act of the legislature relating to elections provide that the cross should be within the square?

Mr. GRIGSBY. Yes; it provides that, by setting up a form, in a very indifferent manner; the language is not mandatory at all; there is no penalty attached; it provides that the ballot shall be in the following form, with the following inscription placed at the top of the ballot, placing the cross in the square opposite the name. So that it is not what we call a mandatory statute. It does not say, as modern stat-

utes do, that any ballot voted in any other manner shall be void and shall not be counted. Such statutes as that have universally been construed to be directory. And in the absence of a showing of fraud, according to the great weight of authority, such ballots have been counted.

But in this last election—now, we got into a contest in that election of 1916. And I subsequently rendered another opinion, on another question, relating to that election, after a great deal of study; and in that written opinion I instructed the canvassing board that they could not do that, and, incidentally, that is in the record, and I will show it to the committee later.

And when they called on me for my opinion on the specific question, in the spring of 1919, after I had been through one contest, I was a little more careful about putting myself on record and in studying the case, and I rendered an opinion, which is in the record here, telling them that they had no judicial power with reference to reversing the judges of election. The judges of election have judicial powers, of course; they are judges of election; they are judges by term, by name; their powers are inherently judicial, as far as they go. And they pass upon the ballots before they send them to the governor, and then the canvassing board canvasses the returns.

Now, here is what they had to do: When these returns [indicating] are sent in, here is what they had to do. The act provides:

The election board at each polling place as soon as the polls are closed shall immediately publicly proceed to open the ballot box and count and canvass the votes cast, and they shall thereupon, under their hands and seals, make out a certificate in duplicate of the result of the election, specifying the number of votes, in words and figures, cast for each candidate.

That is all it has to specify; it does not say anything about specifying the rejected ballots. But the certificate shall specify the number of votes, in words and figures, cast for each candidate:

They shall then immediately carefully and securely seal up in one envelope one of said duplicate certificates; and one of the registers of voters, all of the ballots cast—

That is, either rejected or counted—

and all affidavits, and mail such envelope with said papers inclosed, in the nearest post office, by registered mail, if possible, duly addressed to the governor of Alaska, at his place of residence, with the postage prepaid thereon.

The other duplicate certificate, without the ballots, goes to the clerk of the court.

Mr. CHINDBLOM. From what law are you reading now?

Mr. GRIGSBY. The United States law of 1906, with reference to the canvassing of returns—which the Legislature of Alaska has not attempted to change in general elections at all.

Now, when the clerk of the court gets this, it is provided that he shall, as soon as he receives the said duplicate, certifying the result, which certificate has only to specify the votes cast for each candidate, at once make out and duly mail to the governor a certified copy of such certificate.

Now, the governor, the surveyor general, and the collector of customs shall constitute a canvassing board for the Territory of Alaska to canvass and compile in writing the vote specified in the certificates of election. The rejected ballots are not specified in the certificates

of election. And all that the statute says they shall do is that they are to canvass and count the votes specified in the certificate.

Now, aside from the fact that the canvassing boards have no judicial powers to overturn the result as determined by the judges of election, under this statute they could not do it. The canvassing board—whether I was reversing myself or not in that opinion—the canvassing board canvassing the 1918 election, could not count those rejected ballots; and there was no court that could do that. So that it was one of those cases that had to come up here to Congress. There is such a thing as a community being handicapped by such an election law that their contest can not be settled, except in a legislature or in Congress; and this is one of those cases. Under our present laws, the only tribunal that can pass upon questions of this kind is Congress.

And I think you gentlemen will conclude, when you read the authorities that I have cited in support of that in my opinion, that I was right when I so advised the legislature. But had they pursued the opposite course—if there had been enough of those rejected ballots to change the result in favor of Judge Wickersham, there would have been something in what he says, that he might have got the certificate.

Now, every one of them is described here in this record; and Mr. Wickersham's attorneys were there and saw every one of them; and one of his attorneys sat right up by the governor, and they were treated with every courtesy, as the record shows. I have treated that subject extensively in my brief, showing the extent to which they participated in that canvass and were allowed to examine the returns.

When Judge Wickersham says that they were never allowed to inspect or see those ballots he goes contrary to the evidence in this case. Now, I want you to read that part of the record, which is quoted in my brief from the top of page 9 to the bottom of page 13, and see whether or not these gentlemen had a fair opportunity to take note of these rejected ballots.

And then, when you bring them over here, if they have been tampered with by the governor—whether by lead-pencil marks that have been erased, or in any other manner—I think that science will afford you gentlemen sufficient facilities to discover it. And you have got a record here of what was their condition when they were sealed up. As I figure out, there were 15 votes rejected where the apparent intention of the voter was to vote for Mr. Sulzer, and 15 votes rejected where the apparent intention was to vote for Mr. Wickersham. I may have overlooked one or two, but that is as near as I can figure it out. Judge Wickersham had access to a copy of these minutes, and he makes no claim, except in a general way, to cast insinuations upon the governor of Alaska and the officials there, to kind of combine all of those officials together in a conspiracy to ruin him and so that you will associate in your minds the irregularities up in the Forty Mile precinct with the failure to hold an election over in Nushagak, 2,000 miles away. I think that this record shows, gentlemen, that we had a remarkably pure election up in Alaska. I have in my brief, and in my evidence, proved some illegal votes, but I have not alleged any fraud. I do not presume that every irregu-

larity is criminal; I do not presume that, because Mr. Wickersham's workers, in their zeal, after a strenuous campaign up there in Alaska—because they go out and grab up a lot of Indians who never voted in their lives before, and herd them up at the polls and vote them—I do not want to put them in the penitentiary; and I can not conceive how a United States commissioner, over at Nushagak can be presumed to be guilty of a crime and fraudulent intent, because one of the precincts in his recording district did not happen to hold an election, when there is no evidence to support the accusation that he is guilty of fraud.

There is not a particle of evidence in this record that would be admissible in a court of justice to go before the jury to show that there was no election held at Nushagak, except that they did not send the returns in, which is not inconsistent with the fact that there might have been an election. Here is a United States commissioner over there—Dr. French—I do not know him; but he is employed by the Government; a man whose duty it is, as Mr. Wickersham says, to appoint judges of election and furnish election supplies; and there were not any returns that came in from Nushagak; and Judge Wickersham puts a man on the stand, down in Seattle, by the name of Preston H. Nash, who swears that there was not any election held in Nushagak on election day, although he was not over there on that day, and was not over there afterwards, and does not know whether there was one or not; he swears that supplies were not sent over, but he does not show how he knows it; he testifies in response to leading questions. If you gentlemen will read the evidence of Preston H. Nash you will find that no foundation is laid to show that he knows anything about it; he testifies to conclusions—altogether to conclusions.

And finally, he says that there were 28 or 30 people over there that he thought were voters; he does not know whether they were or not; and that most of them would have voted for Mr. Wickersham, if there had been an election, in his opinion.

Mr. ELLIOTT. Were there any returns made from that precinct?

Mr. GRIGSBY. No; there were no returns made from that precinct. And that occasionally happens in Alaska; it happened at Bristol Bay; and in the wintertime you do not even hear from there for months. I do not think there was an election there.

Mr. HUDSPETH. Where is this Dr. French now?

Mr. GRIGSBY. I do not know; I suppose he is in Dillingham, or in Choggiung.

Mr. HUDSPETH. I want to ask this question: Was his testimony taken as to why he did not send supplies, or why he did not appoint judges of election?

Mr. GRIGSBY. No, there was no testimony taken on that subject, except that of a man in Seattle; and he says that on one occasion he started over there to take these supplies there, but they did not deliver them; and he says they were not taken over; and he says that this Dr. French gave them to a man named Hall; and he says that Hall did not take them over. He was not asked how he knew that, or anything of the kind. He was just testifying to a conclusion. He says the supplies did not go there; he says that they did not have an election.

Now, conceding that they did not have an election, there is nothing in the record against this Dr. French; but for the purpose of argument, I want to show you what is in the record. I want to call your attention to Mr. Wickersham's brief on this subject of Nushagak. His testimony on the subject of Nushagak is confined to the testimony of Preston Nash, a witness who testified in Seattle. Nushagak, you will remember, is in the recording district in which there is also the precinct of Choggiung, at which an election was held; it is across the river from Choggiung, and a few miles up the river; I believe the town of Nushagak is 7 or 8 miles up the river.

The law of Congress makes it the duty of the United States commissioner to divide that recording district into election precincts, and makes it his duty to appoint judges in each precinct, to give notice of elections, etc.

Now, he did divide his district into voting precincts; he gave the necessary notices of election. The only other thing he could fail to do was to appoint judges; unless he failed to appoint judges, he was in no way at fault.

Now, there is not a line of evidence in the testimony of this man Nash—and he is the only witness that says anything about election judges at Nushagak—as to whether they were appointed or not; he says they were appointed at Choggiung, but he does not testify that they were not appointed at Nushagak.

Now, let me show you what Judge Wickersham says. This is his description of the testimony of the witness Nash, which was given August 6, 1919, at Seattle, and will be found in full on pages 76 to 80 of the record. He testifies as follows:

He testifies that he is 45 years old, a citizen of the United States, a married man, a Government school-teacher, and so forth, and so on.

He testifies that Dr. French is the commissioner who has charge under the law of laying out the voting precincts and appointing the election officers. That in 1918 Dr. French renewed the two old-established precincts of Choggiung and Nushagak and called for an election in each, and actually posted notices in Choggiung and Nushagak to that effect.

He testified—that is, Nash did, according to Mr. Wickersham—that Dr. French received the election supplies from the clerk of the court, the blanks, books, etc., which were used at Choggiung; that he selected, appointed, and notified election officers in Choggiung, and furnished them with official blanks, records, books, etc.; but failed and refused to perform those duties in Nushagak; that is, appointing election officers and furnishing supplies; that he received these blanks, official election books, etc., in July; that he was over in Nushagak several times between that time and election day, November 5, and as late as on October 22, but did not appoint election officers or deliver blank supplies there. Mr. Wickersham says that Nash testified to that; he tells you gentlemen that in this brief. Now, Nash did not testify to anything of the kind. Nash never testified to anything from which the inference could be drawn that that commissioner failed to appoint election judges.

Mr. HUDSPETH. Where did Nash live—at Choggiung or Nushagak?

Mr. GRIGSBY. At Choggiung. He did not testify as to whether or not Dr. French appointed judges of election at Nushagak; there is

nothing in his testimony from which Judge Wickersham could have got the idea that he so testified. But Judge Wickersham repeats here to you gentlemen three times—quoting Mr. Nash for it, and then goes on and says it himself three times, that Dr. French failed to appoint the judges of election in Nushagak.

Now, this testimony is given in pages 76 to 80 of the record. I want to read you from part of that brief, with reference to that Nushagak matter, and then read the testimony of Mr. Nash, and then let you figure out why it was necessary to waste a couple of hours' time here discussing Nushagak the other night. There is not anything required by the congressional law to be performed by Dr. French that there is a particle of evidence in this case that he did not do.

I am going to read the rest of my time to-night, if it takes the whole evening to read this testimony of Preston H. Nash, given at Seattle. It is as follows:

PRESTON H. NASH, having been first duly sworn, testified as follows:

Direct examination by Mr. WICKERSHAM:

Q. State your name.—A. Preston H. Nash.

Q. How old are you?—A. Forty-five.

Q. Where is your residence now?—A. Well, I am at present residing in Seattle.

Q. How long have been here?—A. I came down here about the 1st of June.

Q. Where did you come from?—A. Bristol Bay, Alaska.

Q. How long had you resided out on Bristol Bay, Alaska?—A. Well, I resided in Bristol Bay, and the rivers emptying into it, for six years.

Q. Are you a citizen of the United States?—A. Yes, sir.

Q. And a married man?—A. Yes.

Q. Did your family reside out there with you?—A. Yes, sir.

Q. What business were you engaged in at that time?—A. I was teaching Government school.

Q. How long did you teach school out there?—A. I taught school in Bristol Bay and vicinity there six years.

Q. Under what authority?—A. Under the Bureau of Education of Alaska schools.

Q. Where did you reside on Bristol Bay on November 5, 1918, at the time of the general election?—A. At a place called Chogiung, but the post office is Dillingham.

Q. How far are Dillingham and Chogiung apart?—A. They are not apart. Dillingham is a little place, about 4 miles below, and they change the post office up to Chogiung and called it Dillingham.

Q. So that the post office at Chogiung is called Dillingham?—A. Yes, sir; the post office at Chogiung is called Dillingham. They didn't change the name of the post office when they moved it to the lower place.

Q. Sometimes you have your mail addressed to Chogiung and sometimes to Dillingham?—A. It is the same place.

Q. How far is that from the Nushagak polling precinct?—A. Diagonally, I presume it would be 8 or 9 miles.

Q. Where do they hold elections in the Nushagak voting precinct?—A. I think in the schoolhouse there in Nushagak, either in the schoolhouse or store, some place; I think generally in the schoolhouse.

Q. In what commissioner's district is the Nushagak voting precinct in?—A. Dr. L. H. French's.

Q. Dr. L. H. French, he was the commissioner?—A. Yes, sir.

Q. What is the commissioner's district called; is it called the Dillingham district or the Chogiung district?—A. I think it is called the Dillingham district.

Q. The recording district?—A. I think so.

Q. How many voting precincts are there in the Dillingham recording district?—A. Two that I know of; Chogiung, where I live, and across at Nushagak.

Q. Those two precincts are in the Dillingham commissioner's district, and Dr. L. H. French was the commissioner?—A. Yes, sir.

Q. How long had he been commissioner prior to November 5, 1918?—A. Really, I don't know. I think he had been commissioner probably six or seven years. I would not be positive; but it has been a long time there, except one winter he went out on a vacation, and, I think appointed another commissioner, and when he came back, he took it back again.

Q. He was commissioner during the year 1918?—A. Oh, yes, sir.

Q. He had charge of the laying out of the polling precinct in that recording district for the election of November 5, 1918?—A. Yes, sir.

Q. And the appointment of election officers under the law?—A. Yes, sir.

Q. Do you know what he did in the way of making those two voting precincts in 1918? Do you know whether any notice was given of the holding of the election, or not?—A. There was a notice given in each place.

Q. In each precinct?—A. Yes, sir. I know there was one in ours, and they claimed there was one in the other. I didn't see it. It was not across the river. But they claimed that they had notice.

Q. What about you receiving supplies for the Nousegat precinct, books, and blanks, etc.?—A. Well, I think that he received them on the last mail boat, I think, in July.

Q. At the same time that he received all of them?—A. I think so.

Q. The last mail boat was there in July?—A. Yes, sir; unless he received them on the Nome boat. I don't know whether they would have come from Seattle. That was the only boat that was in there.

Q. You had the supplies in your precinct?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. Did you vote in the Chogiung precinct on November 5, 1918?—A. Yes, sir.

Q. And your wife?—A. Yes, sir.

Q. You voted for Delegate to Congress in both of those precincts?—A. Yes, sir.

Q. Was there an election held in the Nushagak district?—A. No, sir.

Q. Do you know whether or not Dr. French was over in the Nushagak precinct some time prior to the date of the election?—A. Yes, sir.

Q. How long prior to that?—A. Well, I was down to his place on Monday night, I think it was October 7, and Supt. Miller, of the schools, was there. I know this because I went down to visit him, instead of his coming to visit the school. I went to see him, and he and Dr. French, on the boat on October 8, in the morning, left the Dillingham, the cannery site, toward the hospital, and crossed over to Nushagak on October 8, and from there they went to Naknik.

Q. Naknik is not in that recording district, is it?—A. No, sir; I think there is another commissioner across on the other side; but they went over to get supplies from this Nome boat.

Q. Do you know whether he took the supplies over for the election of November 5, 1918, at the time that he went over in October?—A. No, sir.

Q. He didn't take them?—A. No, sir.

Q. Do you know what became of those supplies; who did take them over?—A. Well, there was none.

Q. To whom were they delivered, do you know?—A. Just a minute; he was there after this boat. He made two trips in October, over to Nushagak.

Q. He made two trips to Nushagak?—A. Yes.

Q. How late in October?—A. It was probably between the 18th and the 22d. I could not tell the exact date, but I know that he went there the second time to go to Naknik. They were getting supplies from his boat at Nome that brought things up there.

Q. Do you know whether at any of those times he took supplies over for the holding of the election on November 5?—A. No, sir; he did not.

Q. Do you know what he did do with those supplies finally?—A. Well, there was a man by the name of Hall—I don't know his first name—but when he went on the second trip over to Nushagak to go to Naknik he took this man Hall. Mr. Hall is the storekeeper there, and he took him to Naknik and got some things for him—potatoes and things—and they came back to Dillingham to the hospital, and when they arrived there the river was just beginning to freeze ice, and the next morning the ice was floating up and down, and they could not cross. They could not cross.

Q. And the supplies never were taken over?—A. The supplies never were taken over. And he gave them to Mr. Hall.

Q. Did Mr. Hall take them over?—A. No, sir.

Q. Who was Mr. Hall?—A. Mr. Hall was a German alien.

Q. How do you know that?—A. I was acting as postmaster in this little place of Chogiung, or Dillingham, during Otto Larsen's absence. He appointed me deputy postmaster, and there came a law, I think, something up to Alaska, to register all alien enemies, and he was one of them, and he registered as an alien.

Q. How do you mean registered?—A. Well, he came over there, and they had a regular form, and he signed his name and, I think, affixed his finger print.

Q. You say those supplies were delivered to him. Did he ever get them over to Nushagak before that election?—A. No, sir. He was in Chogiung at the time of the election. He could not get over.

Q. And there was no election held in Nushagak?—A. No, sir.

Q. Dr. French is a Democrat?—A. Well, I think he is, from the way he talks?

Q. Was he is supporter of mine?—A. No, sir; he was not.

Q. Was he opposing me?—A. Oh, yes, sir.

Q. To what extent?—A. Well, he was electioneering against you. I know that at one time I was down there to his place, and the question came up about the contest between you and Mr. Sulzer, and I told him—I don't know whether we would get into the question of a talk thereabout it—I told him I thought from some statements that there were some things unfair there, etc., just in a conversation. So finally he up and he said that you were an enemy to the bureau of education and an enemy to the public schools, or something of that kind. Of course, he is superintendent over me there; and I told him that you might be, so far as I knew, but it would have to come from you; that I had read a great many of your speeches and a great many of your congressional reports, and I had never seen anything from you that indicated you were an enemy to the bureau of education.

Q. The short of it is that he electioneered against me and did what he could to defeat me?—A. Yes, sir; I know that.

Q. What did he do?—A. Before that time he was around the village Chogiung talking to the men, because he told me.

Q. Did he talk to you?—A. No, sir; he didn't talk to me. There was no use to talk to me about that.

Q. He was commissioner in that precinct, in that district?—A. Yes, sir.

Q. And recorder?—A. Yes, sir.

Cross-examination by Mr. LEEHEY:

Q. Justice of the peace, and the whole thing?—A. I think all that goes to him.

Q. He was also superintendent for the bureau of education, and had charge of your work over there?—A. Yes, sir.

Q. And he was a doctor?—A. Yes, sir.

Q. What official connection did he have with the work as a physician?—A. Well, he doctored the natives.

Q. So that he was the principal man in the community?—A. Yes, sir.

Q. Do you know who he appointed election officers in the Chogiung precinct, in your district?—A. Yes, sir.

Q. Who?—A. He appointed J. C. Lowe, Charles Nelson, and a man named Owmbly. I don't know his first name. He was the guard at the jail.

Q. He was the guard at the jail under the deputy marshal?—A. Yes, sir.

Q. What did the other two men do?—A. Mr. Nelson was the cannery winter man, watchman at the cannery.

Q. And the other man?—A. He was a trader.

Q. Were either of them friends of mine?—A. No, sir.

Q. Were either of them Republicans that you know of?—A. I don't know about that.

Q. But they were opposing me at the election?—A. Yes, sir.

Q. None of them friendly?—A. No, sir.

Q. Why didn't he send those papers over to Nushagak precinct in time to hold the election over there?—A. Well, I don't know.

Q. Did he have an opportunity to do it?—A. Well, he was there twice himself in the month of October.

Q. And the election was held November 5?—A. The election was held November, 5.

Q. As a matter of fact it was his duty under the law to call the election, appoint election officers, and see that the supplies got there, because the supplies were all sent to him; is that correct?—A. Yes; I think so.

Q. And he didn't send them over?—A. No, sir.

Q. And there was no election over there?—A. No, sir.

Q. How many people live over there?—A. Well, I don't know how many do live there. I made out a kind of a list.

Q. I asked you to make out a list?—A. Yes, sir; I made out a kind of a list; but there are some there I don't know—I know them all, but I don't know their names.

Q. How many names did you put down?—A. I put down 27.

Q. There are others you don't know?—A. There are others I don't know.

Q. Do you think it is safe to say there were 30 voters in that precinct in the Nushagak precinct?—A. Oh, yes; that is, taking it all round, the whole precinct.

Q. Do you know anything about the feeling of those voters over there toward me?—A. Well, I have heard them express their opinion, a great many of them. I am acquainted with them, and I think there were two or three of them against you there.

Q. And the rest were for me?—A. The rest were for you.

Q. Are you quite satisfied from your knowledge and acquaintance with those people that that proportion of those people would have voted for me if the election had been held there?—A. Of course, a man don't know. I can only know from what they said. When it came to voting it might have been different. I know from what they spoke, all but two or three. I never heard them speak either way, but somebody said that they voted against you, only two of them.

Q. Is that why he didn't send those papers over there?—A. That is the way I thought it was. I don't know whether they think that.

Q. The people are of the opinion that you didn't send the papers over and hold that election, because he thought the great majority of the voters would be for me?—A. That is their public opinion about it.

Q. What is your judgment about it, from what you know?—A. To be frank with you—of course a man swearing, you can't swear what a man will do, but—

Q. What is your best judgment?—A. I believe in my heart that that is the reason that he didn't send them over there.

Q. He had an opportunity to send them?—A. He had, twice, and there were people come over to the hospital from Nushagak, that lived in Nushagak, and he was there twice that I know.

Q. And he didn't provide for that election in that precinct?—A. No.

Q. And those people didn't get to vote at all?—A. No, sir.

Q. And your judgment about it is, from your acquaintance with the people, that all but two or three of them over there would have voted for me?—A. That from their talk, it is known as a Wickersham precinct there.

Q. The Nushagak precinct?—A. Yes, sir; the Nushagak.

Q. Your precinct was very largely inhabited by the doctor and his friends?—A. Yes, sir.

Q. That is the Chogiung precinct?—A. Yes, sir.

Q. In that precinct there is Dr. French, the commissioner, and there is the United States marshal there?—A. Yes.

Q. And guards, and other officials?—A. Yes, sir; and hospital nurses.

Q. And all those people were against me?—A. Yes, sir.

Q. All of them?—A. Yes, sir.

Q. The men who appointed them to office up there are all Democrats, are they not? Judge Brown is a Democrat?—A. I guess; sure.

Q. Marshal Brennan is a Democrat?—A. Yes, sir. They were all talking that way. When they came around on the boat they were all electioneering for Mr. Sulzer.

Q. Who was around on the boat that you spoke of?—A. Mr. Castler, the traveling marshal.

Q. What was he doing?—A. I think he traveled, comes up there, and picks up the prisoners that they have there, and takes them out, those that are crazy, etc., and takes them down here to the States, or anyone that has a little prison sentence. Do you want the list of these names?

Mr. WICKERSHAM. I think I will ask him to put a list of these names in the Nushagak precinct in the record at this point.

Mr. LEEHEY. I guess it is all right. I don't suppose he is positive whether those are citizens or not and live there.

By Mr. WICKERSHAM:

Q. What do you know about that?—A. I think they are all citizens. They live there. I think they are all citizens, so far as I know.

PRESTON H. NASH,

Subscribed and sworn to before me this 6th day of August, A. D. 1919.

[Seal.]

HAROLD H. HARTMAN,

Notary Public in and for the State of Washington.

The following is a copy of the list of names said by Witness Nash to be voters in the Nushagak precinct:

T. Patten.

Louis England, wife.

John Bergland, wife, and wife's sister.

Mrs. Cassivamp.

——— Lanbberg.

——— Ostertrum, wife.

Hog Harry.

John Noeholson, wife

Louis Hauser, wife.

——— Anderson, wife.

Bert Johnson.

Thomas Douglas.

Gust Tret (Tretcoff), wife.

Fred Paulson, wife.

——— Bluddy, wife.

Thomas Simes.

You will notice that here is a fellow claiming that they did not have an election there. And yet he was across the river, 9 miles away, according to his own statement.

You will also notice that the witness, Nash, was not asked about whether Dr. French appointed those election judges. It would almost look as if Judge Wickersham knew that Dr. French did appoint those judges, because he so carefully refrains from asking Nash about that. I do not see how he could help asking him that.

Mr. O'CONNOR. Let me ask you right there: Was there any failure at any place to hold an election in any precinct in Alaska, due to the nonarrival of the proper papers or the nonappointment of judges?

Mr. GRIGSBY. I know there have been precincts from which returns have not been received; but with the exception of the election of 1916 and the election of 1918 the elections have not been close enough so that there was any record ever made of it.

In 1916 Mr. Wickersham had a plurality of 31 on the face of the returns, as the vote came in, before it was finally canvassed; and in 1918 Mr. Sulzer had a plurality of 33; so we noticed anything of that kind, you see. But I could not name any instance of that kind if there was one formerly.

Now, here is the record. I have read it to show you that contestant has tried to manufacture a case in this Nushagak precinct out of the whole cloth.

Mr. CHINDBLOM. Is there any proof in the record that anybody voted in the Choggiung precinct who was a resident in the Nushagak precinct?

Mr. GRIGSBY. No, sir; there is no proof of that. Of course, the voting list is here, but it would not show whether they are residents of Nushagak or not. I am going to come to that proposition.

The CHAIRMAN. Well, that question, as I understand, is not raised by either of you?

Mr. GRIGSBY. No; except in connection with this.

Mr. O'CONNOR. Well, it would be important if those voters living in precincts in which an election was held voted in other precincts?

Mr. GRIGSBY. Of course, it would, if there was anything here in the record showing it.

Mr. CHINDBLOM. Well, I just wanted to ask you if there was any evidence of that kind in the record?

Mr. GRIGSBY. Mr. Wickersham says in his brief that Dr. French did appoint election officers in Choggiung, but "failed and refused to appoint any election officers for Nushagak," and that no election was held in Nushagak.

Now, remember that these election officers have to be appointed 30 days before election; and the election notice has to be posted 30 days before the election. If he did appoint these judges under the law he would have to do it 30 days before the election; and this man Nash does not testify about anything except what happened within 30 days; he does not pretend to know anything that happened before then, and he does not claim to know anything about it; and there is no evidence by him or anybody else that the commissioner did not do his duty and appoint the election officers.

Mr. HUDSPETH. Is there any testimony that he posted notices at Nushagak?

Mr. GRIGSBY. Yes, sir; the witness Nash says he posted the notices at Nushagak and Choggiung. Shall I go back and read this testimony again? Do you dispute that, Judge Wickersham? You shook your head just now.

Mr. HUDSPETH. Perhaps you might reread part of that.

The CHAIRMAN. I think I recall the testimony.

Mr. WICKERSHAM. The record shows that he was not over there.

Mr. GRIGSBY. The record shows that he was over there.

Mr. WICKERSHAM. This man with the papers—that he did not deliver these papers appointing the officials; that he did not deliver anything.

Mr. GRIGSBY. Well, this man testifies in two places that the proper notices were posted; and I at this time will not read the record through to show you that and bore you gentlemen with it; but I will find it and read it to you at some other time.

Now, Judge Wickersham goes on to say——

The CHAIRMAN (interposing). As I understand you, Mr. Grigsby, there is no testimony in the record relative to this transaction except the testimony of Mr. Nash?

Mr. GRIGSBY. Mr. Nash—that is all there is.

Mr. WICKERSHAM. And the certificate of the clerk that there was no return.

Mr. GRIGSBY. That there was no return from Nushagak. But I meant with reference to the appointment of the judges of election.

The CHAIRMAN. That was my inquiry.

Mr. CHINDBLOM. Did that congressional law prescribe any specific time within which the supplies should be delivered?

Mr. GRIGSBY. The congressional election law imposes no duty on the commissioner to take any supplies over—or on anybody else. The congressional laws do not prescribe any duty on anybody to furnish any supplies.

Mr. HUDSPETH. Where do they get that law—from the Territorial legislature?

Mr. GRIGSBY. There is no territorial law, except the act of 1915. Here is section 13 of the act of 1915 of the Legislature of Alaska, which Judge Wickersham says is an absolutely void act. This act provides that the clerk of the district court shall forward to each United States commissioner in the division, and to every election board or authorized official in unincorporated towns, at least 100 ballots for each 50 voters in the recording districts and incorporated towns. Section 15 provides that the United States commissioner of each recording district shall supply to the election judges, or the authorized officials in incorporated towns, the required number of ballots for each voting precinct.

Section 21 provides that in any precinct where the election has been legally called and no official ballots have been received, the voters are permitted to write or print their ballots; but the judges of election shall, in this event, certify to the facts which prevented the use of the official ballots, which certificate must accompany and be made a part of the election returns. And if the judge failed to do his duty under the territorial law and take those official ballots over there, then, under section 21, the voters could make their own ballots, so that they would not be deprived of their votes anyhow. And, as a matter of fact, there were not any official ballots in Choggiung either; and they did make up unofficial ballots and certify to the facts in Choggiung.

So, evidently, there were not any official ballots that reached the commissioner at all; and there is no evidence that any election supplies reached him for Nushagak, or whether they did not; but if he appointed the judges of election, posted notices of election, and did everything that the law required him to do, except this "void act of 1915," if he failed to comply with that, then section 21 gives the voters a remedy.

So that there is nothing in this Nushagak case: there is nothing in it to go to a jury with; there is not enough to resist a demurrer on in this Nushagak case that we have spent five or six hours on.

Now, I am going on a little more with it: this in from Mr. Wickersham's brief, page 45:

Witness Nash testified that he was well acquainted with the inhabitants of the Nushagak voting precinct, from his six years of residence among them, and presented, under oath, a list of 26 names of persons residing in the Nushagak voting precinct, and says there were others whose names he could not recall, and that there were more than 30 qualified voters in the precinct. He also swears very positively that the electors in the Nushagak precinct were friends and political supporters of this contestant, and declares that all but two or three of those he named would have cast their votes for Wickersham if they had been permitted to vote. He also declares that it is the public opinion there that the reason why French refused to appoint election officers and to furnish official blanks, etc., to the Nushagak voting precinct was that he knew the electors there would vote for this contestant.

Now, just think of that. That is the second time that he puts it in the mouth of the witness, after misquoting him twice. And he has to show this failure to appoint the judges in there or there is no case. So he does it bodily in the brief. There is nothing in the record to justify it.

That is not all. I will now read what Judge Wickersham says at the bottom of page 46 of his brief:

French's duties as commissioner of elections in the Dillingham district in 1918 were clearly pointed out by section 5 of the congressional act of May 7, 1906 (34 Stat. L., 169, 171), which provides in the most mandatory way that the commissioner shall, at least 60 days before the date of the election, issue an order, to be signed by him and recorded in his official records, and perform these duties:

"First. Divide his election district into such number of voting precincts as may in his judgment be necessary or convenient."

Which French did by creating Choggiung and Nushagak precincts.

"Second. Give notice of said election, etc. * * *. That at least 30 days prior to the date of holding of such election the commissioner shall select, notify, and appoint from among the qualified electors in each voting precinct three judges of election for said precinct, no more than two of whom shall be of the same political party. Said commissioner shall notify all of said judges of election of their appointment as such, so that each and all of them shall receive said notice at least 10 days before the date of the election."

French did not comply with this last statutory mandate—

That is, did not appoint the judges.

Mr. O'CONNOR. And notify them?

Mr. GRIGSBY. Well, either appoint them or notify them; there is no evidence that he did not do that. Judge Wickersham goes on:

He cunningly refused to comply with it, because he well knew the people in the Nushagak precinct, reinforced by a number of settlers formerly residing in the Choggiung precinct, would give this contestant a large majority of their votes.

Now, where is the evidence of this migration from Choggiung to Nushagak? Do you remember anything about that? I have examined the record for it. Judge Wickersham, while he has got his hand in, not only puts testimony into the mouths of the witnesses that they never uttered; but he moves or migrates the people about from one precinct to another, in his imagination.

Now, gentlemen, I am going to go on and show that there is just as much fraud and deception in every one of his contentions in this case as there is in that, before I get through with this argument. He has not come through clean in any of them.

That is as far as I care to go this evening, Mr. Chairman.

(Thereupon, at 11 o'clock p. m., the committee adjourned until Friday, April 2, 1920, at 1.30 o'clock p. m.)

COMMITTEE ON ELECTIONS No. 3,
HOUSE OF REPRESENTATIVES,
Friday, April 2, 1920.

The committee, at 1.30 p. m., this day met, Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. The committee will please come to order. A quorum is present. Mr. Grigsby will proceed.

Mr. GRIGSBY. This is a defective and unauthenticated copy of the Anchorage testimony taken in behalf of the contestee. I agreed that it was not a copy to be printed, but there is no dispute going to be raised about that; but the other copy I should like to have.

The CHAIRMAN. What is this [referring to paper in hand]?

Mr. GRIGSBY. That is the Ketchikan copy.

The CHAIRMAN. Then, I do not want this.

Mr. GRIGSBY. Well, it has been printed, but the witnesses did not sign the depositions.

The CHAIRMAN. That was properly sealed and the seal has just been broken.

Mr. GRIGSBY. This is the second copy of the testimony taken at Ketchikan in behalf of the contestee, the original copy of which was printed in the record, in which several of the witnesses had failed to sign their depositions. The certificate shows what it is. I should like to have it appear in the record that this testimony is accompanied by the following certificate:

UNITED STATES OF AMERICA.

Territory of Alaska, ss:

I, Will H. Winston, a notary public in and for the Territory of Alaska, duly commissioned and sworn, residing at Ketchikan, Alaska, do hereby certify that pursuant to notices to take depositions heretofore filed herein, served on contestant James Wickersham, at Ketchikan, Alaska, personally appeared before me, at my office in Ketchikan, Alaska, the following witnesses on behalf of George B. Grigsby: Ben Ridley, Louie Hudson, James Starr, Joseph John, Mark Williams, Walter Frank, Jimmie Wallace, Matt Fawcett.

That said witnesses were by me first duly sworn to tell the whole truth and nothing but the truth and then and there gave their depositions as herein set forth upon oral interrogations propounded to them by George B. Grigsby, contestee, and by his attorney Charles H. Cosgrove; that after said depositions were typewritten they were subscribed and sworn to by the following-named witnesses: Louie Hudson, James Starr, Joseph John, Mark Williams, Matt Fawcett.

That Walter Frank, Jimmie Wallace, and Ben Ridley are a considerable distance from this city and it is impossible to obtain their signatures to their depositions without large expense and great delay.

In witness whereof, I have hereto set my hand and affixed my official seal this 7th day of January, 1920.

[SEAL.]

WILL H. WINSTON,
Notary Public for Alaska.

There are three witnesses that did not sign. This shows that five of them have signed. Three witnesses could not be found and therefore did not sign. The three that did not sign are Walter Frank, Jimmie Wells, and Ben Ridley. They live a considerable distance from the city, and it was impossible to obtain their signatures without much expense and delay.

STATEMENT OF MR. GEORGE B. GRIGSBY, A REPRESENTATIVE IN CONGRESS FROM ALASKA—Continued.

Mr. GRIGSBY. Now, Mr. Chairman, I was speaking of the Nushagak precinct when I closed last night, and I only have this to say in regard to the vote of this precinct, that the proposition advanced by the contestant that on account of the failure to hold an election at Nushagak the vote at Choggiung should be cast out is not supported by any authorities that he read nor by any authorities that I have been able to find. The precincts have no relation to each other whatsoever, except that in the performance of his ministerial duties the United States commissioner organizes those precincts, and after the returns are made from those precincts he has nothing to do with it. They are not made to him; the returns are sent direct to the governor or

to the clerk of the court of the division, and become a part of the whole returns from the whole territory.

In the case of a divisional office for the failure to hold an election at Nushagak the loss of a sufficient number of votes to change the result would require a new election in the division to fill that office. In the case of a territorial office, if there is a sufficient loss of votes to change the result, it would result in throwing out the whole election for the territorial office unless the injured party can show the number of votes he lost, who they were, and how they would have voted, by satisfactory evidence, which is not in this record. We have nothing except the opinion of a man down in Seattle that 27 or 28 people were inclined to vote for Mr. Wickersham, all but two or three of them, and he thought they were all legal voters, which, of course, is not sufficient evidence to authorizing their counting. So, if you do find there was anything in this Nushagak proposition and there were sufficient votes there not cast, and which were fraudulently prevented from being cast, to change the result, you would have to decide that there was no election; and the authorities hold that, as you will find on examination of the many authorities that have been cited. Now, the other day Mr. Wickersham went back to the election of 1916 in an effort to give this committee to understand that he has had a very hard time of it and was kept out of office for nearly two years owing to the action of the Federal judge up there in entertaining a mandamus proceeding and compelling the canvassing board to issue a certificate of election to the other man, his opponent, Mr. Sulzer.

Now, I do not think that hardship that Mr. Wickersham has undergone in connection with politics is going to affect the committee in the determination of this case at all. But so far as that is concerned, if you will look back through his political record you will find that he has been very fortunate. He has experienced a change in luck the past two or three years. Perhaps that is only temporary. You can not tell what will happen in the future. Now, Mr. Wickersham served as Federal judge from 1900 to 1907. He went off the bench in 1907. He served in Congress from 1908 until March 4, 1919. So he is not to be classified as an unfortunate politician or one who has been adversely treated in politics. Here is all Judge Jennings had to do with it. Under the election law of 1915 the clerks of the district court were authorized to provide a form of official ballot, prescribing the style of the ballot, the color and dimensions of the paper to be used, the provisions for blank spaces for the insertion of the names of candidates not printed upon the ballots, etc. On account of the great distances up there and the possibility that the ballots might not reach all the precincts, the legislature added a section to enable the voters to hold an election, even if they did not get the official ballots, and this is the section:

SEC. 21. That in any precinct where the election has been legally called and no official ballots have been received the voters are permitted to write or print their ballots, but the judges of election shall in this event certify to the facts which prevented the use of the official ballots, which certificate must accompany and be made a part of the election returns.

Now, here is a law which, if valid, prescribes the use of an official ballot for all elections. If the legislature had authority to pass that

law, then as far as the prescription as to the use of the official ballot is concerned it is mandatory in all elections. They passed laws so that an official form of ballot shall be provided for all elections, and unless that is mandatory then it does not mean anything. If you construe that as directory, then you can dispense with the official ballot in any precinct you desire.

Mr. HUDSPETH. You hold that where judges are appointed and fail to materialize, that the people can proceed with the election by selecting their own judges.

Mr. GRIGSBY. Under the law where they have been appointed and fail to appear the people are permitted to select their own judges.

Mr. HUDSPETH. The people show their political attitude by voting at the election, and for that purpose select their own judges?

Mr. GRIGSBY. They select their own judges in that event.

Mr. HUDSPETH. Do you hold that the people's rights are annihilated and destroyed because some official fails to appoint judges?

Mr. GRIGSBY. In Neshigak, for instance?

Mr. HUDSPETH (interposing). Any place.

Mr. GRIGSBY. No, I do not.

Mr. HUDSPETH. Is not the failure of the judges to materialize and the failure to appoint them one and the same thing, so far as the people's right to assemble and hold an election is concerned? In other words, those people can assemble and hold their election, regardless.

Mr. GRIGSBY. I see what you mean. Suppose the commissioner did not do anything for them at Nushigak, for instance, and they made a selection of judges, held their election, sent their returns in and stated the circumstances; under the law, the canvassing board could not count it, but when it came down here to Congress, Congress has the right to determine the equities of the situation and can do as it pleases about it. Now, in this act, in order to provide for an election where the official ballots were not furnished, they passed this section that permitted the voters to make their own ballots, that contained the clause which says, "in which event the judges of election shall certify to the facts which prevented the use of the official ballots, which certificates must accompany and be made a part of the election returns." Now, in 1916, certain returns came in to the canvassing board without that explanatory certificate, and the question came up as to whether they could be canvassed or not. Of course, if the statute had gone on to say, "which certificate must accompany and be made a part of the election returns, otherwise they can not be canvassed," then it would have been expressly mandatory, and the board would have been bound by it no matter how much injustice would have been done by it, because the statute required it. Now, as to the question of it not being expressly mandatory but being impliedly mandatory—when it said that the certificate must accompany the returns, did it mean that otherwise they could not be counted? Was that mandatory or directory? The canvassing board decided that it was directory after I had advised them that it was mandatory.

My opinion is in the published report there, but if that section is construed as directory to the canvassing board, then in any precinct in Alaska you can dispense with the use of the official ballot entirely.

Although you make no explanation the canvassing board would be compelled to count it—which would destroy your whole Australian ballot act and leave up to the voters in every precinct and the judges of election to dispense with it or not as they saw fit, thus opening the door wide to corruption and fraud, which the Australian ballot act is designed to prevent. The test of the mandatory character of a statute is whether a departure from the direction of the statute would defeat its purpose. To hold this section 21 directory would defeat the purpose of the Australian ballot act. It was, therefore, clearly mandatory and just as binding on the election board as if it was expressly mandatory. Well, the canvassing board refused to hold that it was mandatory, and they were about to announce their intention to count those votes. Under the law, they could not say whether those official ballots had arrived or not. They had these returns there with these unofficial ballots and no explanation and no means of correcting it or seeking an explanation, and they decided to hold in favor of counting the ballots. Mr. Sulzer started mandamus proceedings and secured a temporary injunction. The canvassing board made a return in which they stated their situation—that they had received these ballots in that shape. Mr. Sulzer's attorneys demurred to the return, so that it went up before Judge Jennings simply on the question as to whether this statute was mandatory on the canvassing board or not, and he held that it was. He issued a writ of mandamus directing the board not to count these ballots and to return a certificate of election accordingly.

Well, that determined the result. These ballots happened to be from the Choggiung and Nushagak and other precincts. Now, when it came down here before the Elections Committee the committee decided that the statute was directory, especially so far as the House of Representatives was concerned; and they reviewed and analyzed the circumstances and also examined some letters which were put in evidence from the judges of election out there in these precincts, one or two of them, in which they said the ballots did not get there, and decided that the inference to be drawn from all the facts and circumstances was that the official ballots did not get there, and, therefore, these votes were legal. But I don't understand that it was expressly held that Judge Jennings was wrong in the first place, because he was considering the demurrer, and, of course, no evidence was presented to him. There was no evidence from those precincts of any kind. Now, I think he was right.

MR. O'CONNOR. Of course, you can understand that the ballots did not arrive and the people determined to use some other means.

MR. GRIGSBY. If the House was satisfied that these ballots did not get out there they had a right to count them, because they are not bound by the decision of any court. According to the precedents of the House of Representatives they are bound in almost all cases by the decisions of State courts, construing State statutes, and they would be bound by the decisions, according to the same theory, of a Federal court construing Territorial statutes, but they could absolutely say he was right so far as the action of the canvassing board was concerned, and still hold that they had the right to count these ballots, so that their decision is not inconsistent with the decision of the court.

Now, there was no question about the authority—that is the point I was coming to—the authority to maintain this mandamus proceeding. I will read to you from the syllabus in 36 Wisconsin, 498, which was not cited in Judge Jennings's opinion; and there are numerous other cases where State courts hold that the power of the court in mandamus proceedings extends to all ministerial acts of election officers. Of course, the court can not use that right to interfere with any judicial discretion, that is a general principle, but the court can compel the canvassing board to assemble, can compel them to proceed to count the returns, and if a return is absolutely void on its face, without any question the court can exclude it. When he finds out that they are going to dispense with counting valid returns and issue a certificate to the wrong man he can issue a writ of mandamus and compel them to include all the valid returns and exclude those that are void.

I will read from *McDill v. Board of State Canvassers*, reported in the 36 Wisconsin, 498, from the syllabus:

In a proper case this court will require the board of State canvassers to determine in accordance with law which one of the candidates in an election in this State for the office of Representative in the Congress of the United States is entitled to their certificate of election.

In such a case the power of determining the right to the office is vested, by the Constitution of the United States, Article I, section 5, exclusively in the House of Representatives itself, and this court, therefore, can not go behind the returns and investigate frauds and mistakes and adjudge which candidate was elected; but it can determine whether the return made to the State board of the votes cast in any county for such office should be included by the State board in their canvass and statement of the votes cast for said office.

There is the Supreme Court of Wisconsin in the case of the election of a Representative. In this case the petitioner sought a writ of mandamus to compel the canvassing board to exclude certain definite returns, exactly as in the Alaska case, and they decided in that case they had the power to entertain a proceeding to investigate the merits and refuse or grant the petition, to compel the canvassing board to count or not to count. So, now, if this statute had said, "which certificate must accompany and be made a part of the election returns, otherwise they can not be canvassed or counted"—supposing the legislature had the power to pass it and these returns came in without official ballots, without a certificate, there would be no question about the power of the court to mandamus them not to count, and the only thing then for the court to consider is, is the law mandatory, is it equivalent to what it would have meant if it had been expressly mandatory. Judge Wickersham appeared before the Judiciary Committee over in the Senate and tried to stop Judge Jennings's confirmation on account of that decision; and Senators Walsh and Colt found that Judge Jennings had committed no impropriety and were, in fact, positively of the opinion that he had the right to entertain the proceeding and leaned toward the conclusion that he was right in his decision as far as the points raised before him were concerned, but the question of the constitutionality of the statute never was raised in that case by the attorneys. I think there was one other point which Senator Walsh said put him in doubt, but neither one of them—and both are leading lawyers of the Senate—said there was anything wrong with Judge Jennings's decision, and the report has been published giving their views of the situation.

Now, that was the case up in Alaska. I was attorney general and legal adviser of the canvassing board, and I had the responsibility of advising them in that matter, and they refused to follow my advice. Gov. Strong was a candidate for reappointment. He could not get the backing of the Democratic organization up there. They started a fight on him to prevent his reappointment, and in the course of that fight discovered that he was not a citizen of the United States, that he was born in New Brunswick and had never been naturalized; and when we showed that to the Secretary of the Interior he withdrew his name, and the name of Thomas Riggs went in; and, as I stated last night, a fight was made against his confirmation. When the fight was going on with Mr. Strong, just after we got his name withdrawn, the primary election for Delegate to Congress took place in Alaska on the last Tuesday in April, 1918. We have the primary in April and the election in November. The people were divided, and they did not know that we had this citizenship fight on against Mr. Strong. There was no other candidate for the Republican nomination, except Mr. Wickersham. Some who sympathized with Mr. Strong conceived the idea of putting another Democrat up to run against Mr. Sulzer, and we had a heated election. Mr. Sulzer beat him a little over 2 to 1, I believe; but the Wickershamites all over the Territory went into the Democratic primaries, so we did not know what the result would be until the votes were counted. There is evidence offered in this case to the effect that certain soldiers voted in the Democratic primaries, as evidence that they voted the Democratic ticket in the fall election.

MR. CHINDBLOM (interposing). How many contested elections have you had in Alaska?

MR. GRIGSBY. This is the second—one in 1916 and another in 1918, are the only two we have had.

MR. O'CONNOR. Are the Republican and Democratic primaries held on the same day?

MR. GRIGSBY. They are.

MR. O'CONNOR. Have you registration rolls wherein electors are supposed to register their party affiliations?

MR. GRIGSBY. No, sir.

MR. O'CONNOR. How do you know a Democrat from a Republican?

MR. GRIGSBY. Under the law as it existed when we had our first primary election the voter called for a ballot of the party he desired to vote for and he had to place that ballot in that party box. The last legislature passed an act compelling him to declare his party affiliation.

MR. O'CONNOR. You say these primaries are held on the same day?

MR. GRIGSBY. Yes.

MR. O'CONNOR. So, if a man voted for a Republican, that shows that he is a Republican and he can not vote for a Democrat. He could vote six months in advance.

MR. GRIGSBY. There was no law then providing that you have to declare your party affiliation. A year ago last winter I spent a couple of weeks preparing a registration law compelling registration in primary elections long enough before election so that the party affiliation would be registered before the election, and that was defeated by the Wickersham followers in the legislature headed by

Dan Sutherland. They are on record as opposed to every advance in modern legislation in the interest of pure politics in Alaska. All the wickedness and corruption up there is not in the ranks of the Democratic Party.

Mr. O'CONNOR. Were you selected in the Democratic primaries?

Mr. GRIGSBY. No; we did not have any primaries. I was elected in 1916 for four years.

Mr. O'CONNOR. I mean for Delegate to Congress.

Mr. GRIGSBY. No; there was no special election primary. And we could not have gotten a Delegate down here until the special session was over, had there been one.

Mr. O'CONNOR. Then that election was held under this act of the territorial legislature?

Mr. GRIGSBY. The special election?

Mr. O'CONNOR. Yes.

Mr. GRIGSBY. Yes. They repealed the section regarding the official ballot.

Mr. O'CONNOR. Did they have the right to repeal any act of Congress in existence or in force before the passage of that Territorial act?

Mr. GRIGSBY. It was not repealing any act of Congress.

Mr. O'CONNOR. I mean, did they have the right under that law?

Mr. GRIGSBY. They did not have any right to repeal any act of Congress relating to special elections.

Mr. O'CONNOR. I want to say, the way you read that last night and as I understood it then that the Territorial act of Congress gave to the Territorial legislature the right to alter or amend any act in existence or in effect, and the legislature acted within that grant of power, and that you did not transcend or violate any of the prohibitions of the bill; that it was a valid exercise of the legislative power of Alaska.

Mr. GRIGSBY. I see what you mean now. That theory occurred to me so recently that I did not extend it to that special election.

Mr. O'CONNOR. And yet it may be that they had the right to repeal the provisions of the act of 1906 in so far as that related to special elections or any other election, because it would not affect the validity of the special election act at all.

Mr. GRIGSBY. We will come to that a little later.

Mr. O'CONNOR. It gives you the right of special election in case of death or disability, and I believe that is as far as Judge Wickersham goes on the proposition.

Mr. GRIGSBY. Impliedly, all laws which interfere with a right given them by Congress are rendered inoperative, as far as special elections are concerned, and the statute goes on to say that such election when held must be governed by the laws of Congress. Now, when you give the legislature the right to fill a vacancy you impliedly give them the right to fill that vacancy when the vacancy arises, a special election being an emergency election to fill a vacancy. Mr. Wickersham says the time for holding a special election may be fixed by a special notice. The act of 1915 provides that the governor shall call a special election to fill a vacancy by giving 30 days' notice—no more nor less than 30 days. It did not provide how he was to give that notice, how it was to be published, or

anything else. A clause was incorporated in the act of 1919 which made it possible to hold the election, which the legislature is given the authority to fix or prescribe the time for holding. Manifestly, if we can hold an election on 30 days' notice the order can not be made 60 days prior thereto. The authorities are cited in my brief to the effect that all acts inconsistent with the holding of an election 30 days after notice published by the governor are repealed by implication as to special elections. They are not absolutely repealed, because they still exist in full force so far as applicable. So far as the returns are concerned it does not make any difference, according to all the authorities, whether the returns come in in the regular way or not. When we come down here before you gentlemen the question is, Who was elected? It does not make any difference whether any returns came in if I can prove that I was elected. The ballot boxes may be burned up.

If the board determines after election day that a certificate of election should be issued to me, anything that develops after that with reference to the manner of receipt of returns does not cut any figure in the case, provided I was legally elected on election day. As to the question whether I was elected or not, the actual returns received by the canvassing board direct from the various election precincts are in the possession of the Clerk of the House and will show an election was held in 159 out of a total of 164 precincts in Alaska. The total vote in the 15 precincts which hold no special election, estimated according to the vote cast in those precincts in the June election of 1918, was less than one-fourth of my majority. So you will have no difficulty in ascertaining that I was duly and legally elected.

I shall now proceed to discuss one of Mr. Wickersham's contentions, which is treated in his brief under the head of "Frauds in Use of Australian Ballot." This refers to the fact that in several precincts in southeastern Alaska in the election of 1918, which Mr. Wickersham is contesting, the judges of election failed to detach the numbered stubs from the ballots before the same were deposited in the ballot box. I believe there were 50 or 60 ballots cast where the judges of election so failed to perform their statutory duty. And if these ballots were cast out on account of such failure of the election judges it would reduce Mr. Sulzer's plurality by about 30 votes.

MR. HUDSPETH. Now, as I understand that, that was something the voter had nothing to do with. It was entirely within the hands of the election board to do that, was it not?

MR. GRIGSBY. The voter was not at fault. The law places the duty upon the judges of election to detach the numbered stubs. As a general principle the voter can not be disfranchised by the failure of election officials to perform their duty; that is, except in cases where the law itself provides such a consequence to the voter on account of such error or omission of election officers.

MR. ELLIOTT. We have a very complicated election law in Indiana, and, among other things there is a provision that requires the clerks of elections to put their initials at the lower left-hand corner on the back of the ballot. There was a case that went to the supreme court where the clerks failed to put their initials on the back of the ballot. The vote had been thrown out by the election board, and my recol-

lection is that the Supreme Court of Indiana held that the ballot could not be thrown out and a man could not be disfranchised through failure of an election officer to do his duty as required by law. That would seem to be on the same basis.

Mr. CHINDBLOM. I will say, on the contrary, in Illinois there is a provision of the law which requires one of the judges to place his initials on the back of the ballot. Where those initials have not been so placed, under repeated decisions of our supreme court those ballots can not be counted. There is this to be said with reference to the right of the voter, that he is presumed to know the law, and before he returns his ballot to the judge who is to place his initials on the back of the ballot to be deposited in the ballot box he has the right to call attention of the judge to it if the initials are not there and to require him to put them there.

Mr. HUDSPETH. In this particular case before us the voter had nothing whatever to do with the tearing off of the coupon. It was his business to hand this back to the clerk with that coupon on it. He is entitled to assume, it seems to me, that that officer did what the law required him to do.

Mr. CHINDBLOM. But, as I said a moment ago, he is supposed to know the law, and he is supposed to tear off that coupon before it is deposited in the box. When the voter hands it back to the judge to be deposited in the box, if the voter observes that the coupon is not torn off he is supposed to call attention of the judge to it and to require him to tear it off. But, of course, we can not say whether the laws of Indiana or the laws of Illinois can be construed as applying here.

Mr. GRIGSBY. There is this distinction, too—while the general principle is that a voter can not be disfranchised by the neglect of an official, if the statute says he can, then he can, of course. If the statute says ballots from which the numbered coupon is not detached can not be counted and the judge fails to detach them, then the voter is disfranchised because of the neglect of the official, because voters have no right to anything except what is granted by statute.

Mr. O'CONNOR. Does the statute say that?

Mr. GRIGSBY. No; our statute does not say that. But when you read the election decisions, as I have done, you will find that some construe statutes strictly and some liberally, some as mandatory and some as directory. Now, I was asked for an opinion on this matter, and I gave an opinion on these particular ballots, which is in this book I have handed to you gentlemen, and I first said that these ballots having been counted, that in accordance with my previous opinion the canvassing board had no power to overturn the judgment of the judges of election. Now, in addition to this, I will say that the election law passed by the legislature in 1915 contains no provision with regard to throwing out ballots on account of the distinguishing marks, which probably your Illinois election law does. Section 3 of chapter 25 of the Alaska election laws reads:

The ballots shall be headed: "Official Ballot," of the judicial division in which it is issued, and at the top thereof, above a perforated line, shall be duplicate stubs bearing consecutive numbers; one of said stubs to be retained by the election judges upon presenting the ballot to the voter; the other stub to be torn from the ballot by the election judges and compared and retained upon the return of the voter from the voting booth.

What is done with the stubs after they are detached, the laws does not provide. Presumably they are destroyed. The procedure is this—the voter is handed a ballot having thereon duplicate stubs. One is detached when he is given the ballot and retained by the election judge, while the voter goes to the booth to mark his ballot. After he marks his ballot he folds it and brings it back to the election officer, who compares the stub remaining thereon with the stub he holds in his hand. If the numbers on the two stubs correspond the election judge detaches the second stub and deposits the ballot in the ballot box. This system was devised to prevent the form of election fraud known as the “endless chain.”

When the Australian ballot law was first adopted it did not have this duplicate-stub system. A voter could go to the polls, obtain an official ballot from the election officers and walk out with it. All that it was necessary for the persons desiring to perpetrate the fraud was to obtain possession of one blank official ballot. Having so obtained one blank official ballot any number of votes could be purchased. The blank ballot could be marked as desired, delivered to the voter whose vote was to be purchased, such voter would walk into the polls, demand a blank ballot, retire to the booth, return to the voting place and deposit the ballot already marked for him outside the polls, then walk out with the other blank ballot in his possession. This in turn would be marked for a second voter, voted in the same manner, and another blank ballot obtained, and so on, indefinitely. That was the way the endless chain worked. The duplicate-stub system was designed to make impossible this form of fraud. Under the duplicate-stub system the voter must vote the same ballot handed him by the election officer. The numbers on the stubs are compared, consequently an attempt to work the endless-chain system can be instantly detected. In the precincts in question, which Mr. Wickersham seeks to have this committee throw out, there is no fraud shown, but simply the fact that the judges of election failed to detach the second numbered stub from the ballots before the same were deposited in the ballot box. Mr. Wickersham asks you to presume fraud on account of this irregularity. The law is otherwise. As I said before, I rendered an opinion on this matter to the canvassing board, which is contained on pages 138 to 140 of my published report, copies of which have been furnished to this committee. I will read from this opinion, commencing on page 139 of the report:

Section 17 provides that when the voter enters the polling place he shall be given an official ballot by one of the election judges with which he shall retire to the booth or screen and there mark the same for the candidate of his choice.

Section 24 provides a penalty to be imposed upon any person or officer who has assumed the duties of any officer under the provisions of the act, who shall willfully and corruptly neglect and refuse to perform any duty or do anything required of him by the act.

There is no provision anywhere in the act declaring the consequences to the voter or his vote of the failure of an election judge to perform the duty required by law in detaching the numbered coupons from the ballot. In the marks there are no authorities which hold that ballots cast under such circumstances are void. On the contrary, the authorities hold otherwise.

Lynip v. Buchner (41 Pac. 762) ;

James B. McGrane v. County of Nez Perce (112 Pac. 312) ;

Farnham v. Boland (66 Pac. 200).

In the latter case the court said :

“Those ballots were properly counted, which the officers of election placed in the ballot box without first tearing therefrom the numbers attached. It is

quite apparent that these violations of the law arose from the carelessness of the election officers. Such carelessness or misconduct upon the part of these officers may render them liable to severe penalties, but that is all. The law as to identifying marks refers to marks made by the voter, and it is only marks made by him that demand the rejection of the ballot. After citing many cases to the point, this court said in *People ex rel. v. Prewett* (24 Cal. 13, 56 Pac. 621): 'The principle underlying these decisions is that the rights of the voters should not be prejudiced by the errors or wrongful acts of the officers of election, unless it shall appear that a fair election and an honest count were thereby prevented.' "

In *Freshour v. Howard* (77 Pac. 1101), the court said:

"The failure or neglect through ignorance or carelessness on the part of the precinct election officers, to remove the number of the ballot, did not have the effect to make the ballot illegal on the ground of a distinguishing mark placed thereon by the voter."

See, also, in *re Groton* (118 N. Y. Sup. 417):

"It does not appear anywhere in the election law of 1915 that it is required that the voter is handed a ballot by the election officer with a number on the stub corresponding to the number set opposite the name of the voter in the election register. It can not, therefore, be presumed that the retention of the stub on the ballot affords any means of identification." (Opinions of Attorney General, p. 139.)

The views expressed in the opinion I have just read are not contradicted by any authorities that I have been able to find. Mr. Wickersham cites you an authority which he claims is in point, to wit, the contested election case of *Iaukea v. Kalaniana'ole*, reported in *Moore's Contested Election Cases*, page 30. This case was decided in the Fifty-ninth Congress. It is not in point. They had an election law in Hawaii providing that the Secretary of State should arrange for the printing of the ballots, providing of ballot boxes and general conduct of elections, but the decision in this Hawaiian case states that this law did not apply to the election for Delegate to Congress. However, the Secretary of State and election officers of Hawaii attempted to apply the general election law to the election for Delegate.

The law as stated in the contest decision declares "that the ballot shall bear no word, motto, device, sign, or symbol other than allowed therein," and "if a ballot contains a mark or symbol contrary to the provisions therein set forth, it must be rejected." The Hawaiian election law had no provision for numbering the ballots. The Elections Committee, who decided the Hawaiian contest, held that when the election officials of Hawaii attempted to apply this general election law to the election for Delegate to Congress they were bound by its provisions. They proceeded to have the ballots printed on which were numbered coupons. The numbered coupons were not authorized by the Hawaiian statute, consequently they came within the prohibition that the ballots should bear "no word, motto, sign, or symbol other than allowed therein."

In the Hawaiian case, as in this case, the judges of election failed to detach the numbered coupons from the ballots before depositing them in the boxes. The committee very properly held that these ballots contained a distinguishing mark prohibited by the statute, and as expressly required by the statute on account of such distinguishing marks these were rejected. In addition to that both parties to the contest conceded that such ballots ought to be rejected, and the committee adopted their contention. In other words, in Hawaii the election was conducted under a law which did not authorize the numbered coupons at all, but expressly prohibited them, and pro-

vided for the rejection of any ballots containing any marks prohibited. It was a mandatory statute in that respect. In Alaska, on the contrary, the law expressly provides for the numbered coupons, but contains no provision whatever against distinguishing marks. I submit not only that there is nothing in Mr. Wickersham's contention with regard to the ballots complained of, but that his contention is not made in good faith, as clearly appears from his brief. On page 108 of his brief he states as follows:

In section 22 it is provided there shall be a registration of the voter when he is given his official ballot, and his ballot and name in the registration book are given the same number, thus identifying both the ballot and the voter as long as the number is left on the ballot.

It was necessary for contestant to make that misstatement in order to support his theory that an opportunity for fraud was afforded by the failure of the judges of election in the precincts in question to detach the numbered coupons. He attempts in the statement I have just quoted to make this committee believe that the law of Alaska required the number on the ballot to correspond with the number opposite the voter's name in the registration book. But section 22, which I have just quoted, makes no reference whatever to the numbering of the ballot or to any number in the registration book. The word "number" is not contained in section 22. I have fully explained this attempt of contestant to deceive this committee on pages 145 to 151 of my brief, and there is no use discussing the subject longer, except to say that contestant, as in the Nushagak contention, is again guilty of a deliberate attempt to deceive this committee both as to the law and the facts. The contention of Mr. Wickersham with regard to the throwing out of ballots from which the numbered coupons were not detached is made in bad faith, as will be perfectly evident to the committee upon an examination of the briefs of contestant and contestee on this subject.

Now, I am going to discuss Mr. Wickersham's contention with reference to alleged illegal votes cast for Mr. Sulzer in southeastern Alaska. I have stated in my brief that if you gentlemen adopt the theory that votes cast in a precinct by voters not having a residence of 30 days therein are not legal, then in that event the evidence establishes that the following voted in the wrong precinct and voted for Mr. Sulzer, to wit: Charles A. Sulzer, E. Van Mavern, W. G. Allen, Mrs. W. G. Allen, H. J. Raymond, Mrs. H. J. Raymond, F. Jacobson, Mrs. F. Jacobson, J. R. McNeil, Joseph A. Snow.

I also concede that S. Kincaid was not a resident of Alaska and voted for Sulzer. That makes a total of 11 votes cast for Sulzer in Southeastern Alaska, 10 of which are illegal if 30 days' residence in the precinct is required. On the other hand, notwithstanding that they voted in the wrong precinct these 10 votes were cast by persons who were legal residents of Alaska and citizens of the United States. They voted under the belief that they were entitled to vote anywhere in their division. Each one testified frankly without objection on the part of contestee that he voted for Sulzer. There is no justification in any aspect of the case for Mr. Wickersham to characterize these votes as fraudulent. However, Mr. Wickersham claims 24 illegal votes were cast for Sulzer in Southeastern Alaska, of which I concede 11, including the vote of S. Kincaid, who was not a resi-

dent of Alaska, and including the 10 whom I have named, who voted in the wrong precinct. Of these 10 votes one was cast by Mr. Sulzer himself, and although there is no evidence that Mr. Sulzer voted for himself I have conceded that he did because I would not have it go down in history that I conceded he might have voted for Mr. Wickersham. I will concede that Mr. Sulzer voted for himself because the presumption is that he was of sound mind. No doubt Mr. Wickersham voted for himself.

Mr. CHINDBLOM. Doubtless both men thought they ought to vote for the best man.

Mr. GRIGSBY. Eliminating these 11 votes 13 are left which I shall proceed to discuss briefly. They are: Mrs. S. Kincaid, George A. Nix, Bert Heath, J. C. Cochran, "The Tailor," W. S. Chapman, William Semar, Mrs. Semar, Gus Gillis, Mrs. Gus Gillis, Steve Regan, Mrs. Steve Regan, E. G. Morrissey.

Mrs. Kincaid was not a resident of Alaska, but there is not sufficient evidence to establish how she voted. She says in her testimony that she does not know.

Now she declares she does not remember how she voted. Her husband had just been on the stand and said he voted for Sulzer. No objection was made by my attorney in any of these cases or suggestion they did not have to tell who they voted for; but she said that she did not have any recollection and, being a woman that never lived up there long enough to be entitled to a vote, probably she did not have enough interest to know what the issues were, or did not care. I have no doubt that she was telling the truth when she said she did not know who she voted for. And I have no doubt that she was telling the truth when examined by Attorney Marshall (p. 121 of the record), as follows:

Q. You didn't consider the matter serious enough to give consideration to?—A. We didn't talk it over. My husband phoned up for me, and after that we didn't talk about it.

Q. What have been your political affiliations, if you had any?—A. I haven't had any.

Q. Had you never discussed the merits of this campaign with any one at all or heard anything about it?—A. No; nothing except what I had heard about the Wickersham and Sulzer controversy.

Q. From what you heard about that controversy, would you have any sympathy or prejudice anyway?—A. No.

Q. Formed no opinion?—A. Formed no opinion whatever.

Q. But you felt as an American citizen you ought to exercise your right to vote?—A. Yes.

Q. Even if you did it blindly—didn't you state to me at the time I took your affidavit, although you were not positive, you believed for Sulzer?—A. I could not say that; I don't remember. At the time I couldn't say which I voted for.

Q. But you told me you believed?—A. I don't remember whether I told you that or not.

Q. You read the affidavit over when you signed it?—A. Yes.

Q. And you made, and I made for you, an addition to it?—Yes; I remember that.

Q. And didn't I write in with your consent that you believe you voted for Sulzer?—A. I think you did.

CROSS-EXAMINATION.

Q. You have no impression as to how you did vote?—A. I couldn't remember.

Q. You do remember about that time Wickersham was a very prominent name in Alaska?—A. Well, I remember Mr. Sulzer was, too.

Q. If Mr. Marshall had asked you if it wasn't likely you had voted for Mr. Wickersham, you probably would make the same reply?—A. Well, I suppose I would; I don't remember who I voted for. I couldn't say.

Her husband has just testified frankly that he voted for Sulzer, and she did not remember who she voted for. Now, there is no legal presumption that a woman votes the same as her husband; and, in fact, lots of them do not purposely, and lots of them do not by mistake. That does not apply to my case; my wife votes the way I do. But suppose, gentlemen, that this case got down to a point where the decision rested on that one vote of Mrs. Kincaid. Wickersham's attorney, Mr. Marshall, whom he employed to go out and get the affidavits which are brought down here for this ex parte proceeding, who was employed through all the rest of the contest, comes down there hunting evidence, as attorneys do, getting affidavits. If you gentlemen ever tried any mining lawsuits, you know what that means. You get a lot of fellows in the office and get them on record in an affidavit. Here is an experience of an attorney trying to get an affidavit from a woman to help him out; to secure evidence to seat a man in Congress; and the woman does not care anything about it; not interested in it; and he gets here to sign an affidavit that she believes, and with her consent he wrote in the affidavit, that she believes she voted for Sulzer. Even then, not that she was sure—supposing she had gone on the stand and testified “I believe I voted for Sulzer, but I am not positive.” That would be better evidence than you have; supposing she did that, and that was the one vote that was to decide this contest. Would you unseat a man on that evidence and put another man in his place? How much less, when she is called as a witness she says she does not remember how she voted, and her testimony is apparently truthful.

Now, whenever you consider one of these votes and pass upon the legality of it or the way it was cast, you can not do it carelessly. You can not say: “Well, the indication is that she voted for Sulzer,” or “The indication is that she voted for Wickersham.” You can not say which of these two things is the most probable. Is it more probable that she voted for Wickersham or for Sulzer? You gentlemen are deciding the right of a man to sit in Congress, and you can not decide the case on a hair-line balance of probability. It has to be better, stronger evidence—more satisfactory evidence—to determine your decision in a case of this importance.

Here is a woman, who does not remember how she voted, inveigled into making an affidavit that she believed it was Sulzer. She never said she knew. So, with respect to this vote, which you can not in justice and equity count for Sulzer if it is the determining vote; therefore you can not count it at all, because you have got to treat each one of them just as though it was the determining vote. In respect to votes of this kind, I want to call the attention of the committee to be most careful, because I do not want to make this argument over with respect to each one of them. I make it for this reason, because, with respect to the evidence there is here, if there is any evidence, to indicate how the woman voted, it is that she voted for Sulzer; but there is no evidence that she voted for Wickersham, except she must have voted for one of the three.

That is not enough. You can go to the jury in a lawsuit with some evidence to indicate that the allegation of your complaint is right and true; but you have got to have enough to satisfy the judge to the extent that he will let it go to the jury; and if his was

a property right—if you were determining title to land on evidence like that here—if you were determining the right of possession to a horse or a cow, the judge would say: “This is not enough to go to the jury.” “You may own this cow (this woman might have voted for Sulzer), but you can not take this cow out of the possession of one man who has the apparent right to it and put it into the possession of another man on this kind of evidence.” I do not think there can be any question about that.

Mr. CHINDBLOM. Is that affidavit in evidence?

Mr. GRIGSBY. Yes: but it is not properly in evidence; it is in evidence, but not in proper form. I think that Judge Marshall, when he testified, offered the affidavit as an exhibit. In it she said that she believed that she voted for Sulzer, and if it was not in evidence, the evidence is here that she made it.

That is Mrs. Kincaid. Now, we have George A. Nix, who, the evidence shows, was an Indian, and I will concede that the evidence shows that he did not reside in the precinct for 30 days; and the evidence of one witness shows that he rode down to the polls in an automobile with Mr. Mahoney, and that his vote was challenged, and Mr. Mahoney assisted him to swear it in; and Mr. Mahoney was a supporter of Sulzer, and then the Indian took the ballot and voted.

Now, the question is, Is the evidence sufficient to satisfy your minds that he voted for Sulzer? The judge read some authorities here the other day to the effect that you are not confined to the testimony of the witness as to how he voted, but you can take into consideration his previous political association, who assisted him in voting, who challenged his vote, who assisted him in overcoming the challenge, and all of that, and determine how he voted. In fact, in his remarks on that subject he almost tried to convince you that as a matter of law in this case you would have to accept the evidence of the record, whether it is satisfactory to your minds or not. That, as a matter of law, you have to accept it and determine how people voted. Now, there was no authority held anything of the kind. There is no authority compels you to take any evidence that does not convince you to a sufficient extent that you are willing to act on it in determining this important matter. So, you have to take into account that the only witness that testifies in his case of the Indian Nix, is a watcher for Wickersham—one of his watchers at the polls; he is his omnibus witness in this case, and he has contradicted himself. He might have been mistaken. He said that Van Mavern came down to the polls with Mahoney, and that was questioned, and he immediately said “I might have been mistaken.” And afterwards Van Mavern swore that he walked down to the polls from Ketchikan to Charcoal Point and voted for Sulzer. I have conceded that he did. He is a high-class man in every respect. And this Althouse had previously sworn that Mahoney hauled him down there in his automobile.

Now, it is pretty hard punishment on you people to pass upon this; but you have got to read the evidence in this case in regard to this man Nix; and you must read all of the testimony of Althouse in the case and decide what kind of a man he was, whether you can throw a man out of a seat in the House of Representatives on the testimony

of an extreme partizan of the other fellow with reference to acts and circumstances which indicate how a third party voted; whether that is satisfactory evidence is something that will make you pause and consider.

Now, there is other evidence that this man's vote was challenged. I will admit that, and that he swore it in. He was challenged by this man Althouse, though; he was the man who challenged it, so that does not strengthen it, and the mere fact that a man's vote was challenged, aside from other circumstances, does not prove how he is going to vote. Any tribunal that ever decided that it did must have been looking for something to decide the case on.

Mr. HUDSPETH. In your judgment, how many Republicans in Alaska failed to vote the straight Republican ticket? What per cent?

Mr. GRIGSBY. Well; I will answer that question this way——

Mr. HUDSPETH (interposing). And how many Democrats failed to vote the straight Democratic ticket?

Mr. GRIGSBY. Oh, I will tell you; we voted for a Delegate to Congress in that election and four representatives and one senator from each division, and a road commissioner, and the personal friendship cut a whole lot of figure, and there would be a very large per cent might scratch one or two names. It would be impossible for me to estimate. I think it would be very large.

Mr. O'CONNOR. How many voters voted in the primary for Sulzer?

Mr. GRIGSBY. Over 3,000.

Mr. O'CONNOR. How many voted for Wickersham in his primary?

Mr. GRIGSBY. Why, just a few hundred; less than a thousand. How many Judge?

Mr. WICKERSHAM. I have no idea. Is there a record of that?

Mr. GRIGSBY. Yes. There was no contest; you see, the contest was in the other primary, and it was very bitter.

Mr. CHINDBLOM. Did Sulzer have a primary contest?

Mr. GRIGSBY. Yes; the Wickershamites put up a man to beat him in his own primary.

Mr. O'CONNOR. Is there any way of ascertaining definitely the exact number of votes that were polled for Sulzer in the Democratic primary, and for Wickersham and his opponents in the Republican primary?

Mr. GRIGSBY. It could be ascertained by wire.

Mr. CHINDBLOM. You elected members of the legislature at the same time?

Mr. GRIGSBY. Yes.

Mr. CHINDBLOM. How many members of the legislature were elected?

Mr. GRIGSBY. Eight members of the—the 16 members of the house were all elected; they are elected every two years, four senators and all the representatives—but there are only four members in each division; no man can vote for but four members of the house and one senator.

Mr. CHINDBLOM. What was the political complexion of the legislature as the result of that election?

Mr. GRIGSBY. The house was Democratic, according to the political affiliation of its members, as they ran in the election. And it had a

working majority that we would call Democrat members of about 9 to 7. The senate was Democratic, according to the election, but some were Wickersham Democrats. The politics of Alaska are Wickersham and anti-Wickersham, politically.

Mr. O'CONNOR. What do you call a Wickersham Democrat?

Mr. GRIGSBY. Well, it is in the record; Wickersham was nominated by a Democratic convention in 1914——

Mr. WICKERSHAM (interposing). Do not state that to the committee.

Mr. GRIGSBY. What year was it?

Mr. WICKERSHAM. I never was nominated in a Democratic convention in my life.

Mr. GRIGSBY. At Valdez?

Mr. WICKERSHAM. No, sir; I was not. The Valdez convention passed a resolution commending me for my services in securing the Alaska Railroad, and so on, but that was all.

Mr. GRIGSBY. Well, that is his statement, but when I come to it I will make——

Mr. WICKERSHAM (interposing). Well, it is in the record.

Mr. GRIGSBY. Yes; I know; but I can come to that; I was not going to discuss that, Judge, but since you have I will go into it. I think it is a credit to you. I think you ought to be proud that you were nominated by any kind of a Democratic convention.

Mr. WICKERSHAM. Well, I have never complained about it, have I?

Mr. GRIGSBY. Well, you are denying it, you know. I am astounded at you.

I was discussing this man Nix. Now, he is an Indian, too, and we have got this Australian ballot; and he came down there and according to the testimony of Althouse was in Mahoney's automobile. Now, it is a half mile from Ketchikan to Charcoal Point, and there is a board walk; the people of Charcoal Point are really in the town of Ketchikan, as far as their business dealings are concerned. It is a the place where they hang about—the hotels are all up in Ketchikan, but Charcoal Point is just outside of the limits, so that the United States commissioner has to appoint the judges down there. On election day there are a great many automobiles running up and down the street all the time.

Mr. O'CONNOR. These two polling places were within a half mile of each other?

Mr. GRIGSBY. Yes; and the testimony shows that Mahoney's automobile was going up and down there all day. There were not a hundred votes cast at Charcoal Point, but according to the testimony of the Wickersham witnesses in this case Mahoney must have carried over to the polls more people than the vote cast in Charcoal Point. Otherwise you can not account for the amount of gasoline he burned that day. And up in Anchorage this testimony shows they had two or three automobiles running all day, and that is against the law, too, of Alaska, to use automobiles or other conveyances to carry voters to the polls for the purpose of influencing their vote. It does not vitiate the vote, but the offender, if convicted, can be fined for doing it. But you gentlemen, with the experience you have had in elections, are you going to presume that a man voted in any particular way because he rode in any particular conveyance? Sometimes it is to your

interest to get out all of the voters; to get them to the polls. You say, "Boys, we can win if we get all of the votes out."

Mr. O'CONNOR. Whoop them up?

Mr. GRIGSBY. Certainly. Have not you done that? You gentlemen are not going to throw anybody out of a seat in Congress because Mahoney hauled this fellow or that fellow to the polls.

If you read Althouse's testimony, you will see that he is one of those peculiar geniuses who goes to an election and hangs around there, and when a lawsuit comes up he is the main witness in the case—a very reckless witness, a very eager witness. His testimony is the thing to read; and I want you to read it. I want you to pass on Nix. One of the reasons that Judge Wickersham has made so many contentions in this case, and filled up this record with a whole lot of stuff that is immaterial, is to make it hard to read. You have seen that Judge Wickersham is a genius at making out his own case, and his argument, where he comes to the facts and is able to state his view of them, is quite plausible. He relies on you to take his statement of the facts as true and hopes that you will not look them up for yourself. And the bigger the record is, the harder it is for you to do it. And I earnestly ask this committee to study this record, and to study it carefully, before they render a decision in this case. The more you study it the better it will suit me.

Mr. WICKERSHAM. Well, I agree with you about that, too.

Mr. GRIGSBY. The next witness is Bert Heath. That is, the next one that I do not concede. His father was a legal voter there in Charcoal Point, and I have not been able to find that the records show how old young Heath was, but he left home some years before the election, was gone four or five years, and, I think, returned to Ketchikan about July before the election. The question is whether he lost his residence. There is no evidence as to whether he did or not, except that of his father, and his father testifies, on page 124 of the record, on cross-examination:

Q. And your boy, Bert—I presume your home is your boy's home?

Mr. HEATH. That is all the home he has—with me.

Q. And that was his residence?

And his answer was:

The only residence he had.

And then he was asked:

And his residence had been Ketchikan for four or five years?—A. Yes.

Now, I would not make much argument to contend that this man was a resident in Ketchikan or that he was not. He was away—if a boy is away before his majority, his domicile is the domicile of his father. That is the rule. And if he is away after his majority, he can be away for any length of time he chooses, as a traveler, and if he does not acquire a residence elsewhere and intends to maintain the one he already had, he does not lose it. So the mere fact that he was gone does not establish that he lost his residence. But aside from that, there is no evidence as to how he voted. Mr. Heath says he does not know.

Mr. O'CONNOR. Do I understand correctly, that during the boy's minority his domicile is that of his father?

Mr. GRIGSBY. Yes.

Mr. O'CONNOR. If he goes away during his minority and is away when he reaches his majority, and does not declare otherwise, he still continues to have his domicile with his father?

Mr. GRIGSBY. He does not have to declare, unless he acts otherwise.

Now, further than that there is no evidence as to how he voted, except that the old man, Mr. Heath, said he thought the boys all supported Sulzer, but he says positively that he does not know. There is no evidence that he talked with him about it, or that anybody talked to him about it, and finally it is brought out that some of his family did not support Sulzer.

Mr. O'CONNOR. Did not?

Mr. GRIGSBY. Did not. And it is brought out that he, himself, was peeved at the Democratic organization because he did not receive the nomination for the legislature in the primary, and he finally refused to swear positively that he himself voted for Sulzer.

Mr. O'CONNOR. Mr. Grigsby, if you will pardon me for asking the question——

Mr. GRIGSBY (interposing). Certainly.

Mr. O'CONNOR. But I was not exactly clear on your answer to the interrogatories of Mr. Chindblom. Were the delegates of the territory of Alaska elected at the same time that your primary and Mr. Wickersham's primary was held, or at the time of the general election?

Mr. GRIGSBY. The primaries are all at the same time.

Mr. O'CONNOR. When were the members of the legislature elected?

Mr. GRIGSBY. The same time as the Delegate; November 5, 1919.

Mr. O'CONNOR. How many representatives in that legislature?

Mr. GRIGSBY. Four in each division, and two senators.

Mr. O'CONNOR. How many does that make, as a total?

Mr. GRIGSBY. Six from each division.

Mr. O'CONNOR. As a total, throughout the territory?

Mr. GRIGSBY. Twenty-four; but there are only four senators elected each election.

Mr. O'CONNOR. Four senators and 20 delegates?

Mr. GRIGSBY. Sixteen representatives and four senators elected each time.

Mr. O'CONNOR. How many of those elected at that election were Democrats and how many Republicans, of the total legislature?

Mr. GRIGSBY. Well, nine and five would be 14 Democrats——

Mr. O'CONNOR. Fourteen Democrats out of how many, as a total? Out of 20?

Mr. GRIGSBY. No; let us see. I am counting the hold-overs, too. You see, there were four senators held over. I would have to sit down and think a minute.

Mr. O'CONNOR. I wish you would get that in the record, the number of representatives and senators elected at the election in which Sulzer and Mr. Wickersham ran.

Mr. GRIGSBY. Well, there were nine members of the house, Democrats.

Mr. HUDSPETH. They were elected?

Mr. GRIGSBY. Yes; at the same time Mr. Wickersham and Mr. Sulzer ran.

Mr. O'CONNOR. How many Republicans?

Mr. GRIGSBY. Seven in the house, and in the senate there were three Democrats elected.

Mr. HUDSPETH. Three Democrats, senators, and one Republican?

Mr. GRIGSBY. One Republican; I can not remember who he was. I think he did not amount to much.

Mr. O'CONNOR. I wanted to know the number.

Mr. GRIGSBY. It would be 12 Democrats to 8 Republicans.

Mr. O'CONNOR. I wanted to know the number. Nine Democrats were elected at that time as representatives, and seven Republicans; three senators, Democrats, and one senator, Republican. Now, I understand.

Mr. GRIGSBY. Here is the evidence about how this boy voted; page 123 of the record:

Mr. Heath, is it not true your family all supported Mr. Sulzer, did they not?

That is a rather leading question.

A. I do not know; I did.

Q. Well, don't you know whether members of your family voted or talked in support of him?

And he answered:

I felt pretty well satisfied they were going to support him.

Q. You talked with them frequently?—A. They talked that way.

Q. Including Bert?—A. Yes.

Bert is the one in question.

Q. Have you any doubts that all did vote for him?—A. I am pretty well satisfied they did; all my sons and daughters, excepting one; I doubt whether Mr. Lloyd and his wife did.

Q. You don't think Mr. Lloyd did?—A. I think not.

Q. But you think all the rest of your family that did vote voted for Mr. Sulzer, including Bert?—A. Yes.

Cross-examination:

Q. You are not very certain of that, Mr. Heath, that they voted for Sulzer?—A. I have no way of thinking so except their talk; they didn't tell me how they voted.

Q. If you hadn't been a rock-ribbed Democrat you wouldn't have voted for Sulzer the last election yourself?—A. Well, I couldn't say that Charlie—I liked Charlie Sulzer pretty well as a man.

Q. At that time you were pretty sore at your treatment by the Democratic organization?—A. Well, I was, a little before, sore.

Q. And for that reason you made no effort in Sulzer's behalf?—A. No.

Q. The reason, now, you voted for Sulzer?—A. To the best of my recollection.

Q. But you are not certain of it?—A. Yes; I feel pretty certain.

Q. Not dead certain—are you prepared to swear now that you did vote for Charlie Sulzer, feeling how you recollect you did feel sore over the treatment you had received?

Judge WICKERSHAM. I object to counsel's testifying, although he does a very fine job of testifying.

Mr. HEATH. I think I wouldn't have to swear I voted for him.

He did not say he would not like to, according to the transcript. He says:

I think I wouldn't have to swear I voted for him.

He says he has no doubt about it before that, and he says he did nothing in his behalf.

Q. You felt sore because you hadn't been nominated as a member for the Territorial legislature on the ticket as promised?—A. I didn't feel sore about that.

Q What did you feel sore about?—A. I don't think I felt sore. I don't mind telling you that I didn't think that the Ketchikan Democrats, any of them, were getting what they ought to get; I thought they were hogging it all in other localities.

Now, here is a man that certainly was sore, and he is a Wickersham witness, and he will not swear he voted for Sulzer himself. Here is a Democrat refused a nomination in the primary, and he is sore enough, so he is a Wickersham witness. Wickersham does not put any witnesses on the stand until he knows what they are going to testify to. He is friendly enough to Wickersham that he comes to him, or to his attorney, prepared to go on the stand against Sulzer and give evidence that from the general talk he thought Bert Heath voted for Sulzer, though Bert never told him so. He wants you to throw that vote out. Now, that is not an unfair presentation of the facts. Those are just a few of the circumstances that I have to argue to you gentlemen as if you were a jury discussing the evidence of the witnesses in a civil suit as to where a stake was and you have to analyze it. So, you see, you have a fine job ahead of you, because I can not begin to analyze the testimony in this record. The chairman has talked about taking the strings off on time. I now want to tell him it is a good thing he put some kind of a limit on, because I would feel it my duty to analyze every bit of this evidence to the utmost of my capability. At that, I will cut it as short as possible.

There is Bert Heath. That is the third doubtful vote disposed of.

We now come to J. C. Cochran. He was the lighthouse keeper at Lincoln Rock, and a Federal employee, and there is no evidence in the record as to in what precinct Lincoln Rock is, if it is in any precinct, except some evidence of one witness that he thought it was closer to the town of Wrangell than to Ketchikan, which would not necessarily put it in that precinct. A place can be closer to a town in one precinct than to a town in another precinct and still not be in the former precinct. There is no testimony as to what precinct Lincoln Rock is in. But it does not make any difference. The testimony is that this man was a Federal employee, stationed at a lighthouse, and when he got his appointment he had to give his residence, and he gave it as Ketchikan, and he came back to Ketchikan and offered to vote, which was the only place he could have voted, if he was entitled to vote anywhere, and his vote was challenged, and instead of swearing it in—whether he did not know whether he had a right to or not—he went down with the rest of the voters to Charcoal Point and voted there. Now, he did not have a vote there, but he did have a right to vote in Ketchikan, and this election committee in the 1916 contest hold that if a legal voter goes up to the polls and is denied the right to vote that the committee can count it. Now, it is counted already, at Charcoal Point, so your action would have to be either to leave it as it is or throw it out. But if he had not gone to Charcoal Point and voted you would have had the right to count it at Ketchikan. There is no satisfactory evidence as to how he voted.

Now, here is a Jew tailor. That is not a man's name. This man Althouse testifies about another man that he says he thinks was a tailor from Seattle. He thinks he is a Jew or Slovene, he does not know which, and that he was down there with the bunch and voted

at Charcoal Point; and he had never seen him anywhere except in the town of Ketchikan, and he did not know where he ate or slept. He does not say how long he had been around there, and there is no evidence in the record of anybody else that knows this individual, that I know of. He just comes and grabs another one.

There was another guy down there. I don't know where he ate or slept; I never saw him any place except around the town of Ketchikan.

There is where everybody goes in the day time——

Mr. HUDSPETH (interposing). Whom did he vote for?

Mr. GRIGSBY. Nobody knows; but he is supposed to have been hauled down there with the rest of them in an automobile. The testimony of Althouse is so long——

Mr. HUDSPETH (interposing). Did Mr. Wickersham get any votes at Charcoal Point?

Mr. GRIGSBY. Yes; the result was practically even at Charcoal Point. The result at Charcoal Point was: Sulzer, 45; Wickersham, 42; Connolly, 3. And the town of Ketchikan, Mr. Wickersham carried by about 91 votes.

Now, this tailor, this fellow that he said was a Jew (p. 137 of the record):

Q. Did he live in the Charcoal Point precinct?—A. I never saw him only around Ketchikan. I don't know where he sleeps and eats; I never saw the man in the Charcoal Point precinct.

Q. You were well acquainted out there?—A. Around back and forth every day.

Q. And knew the people?—A. Yes, sir.

Q. Did he reside there?—A. No; he didn't.

If he does not know where he eats or sleeps, how does he know where he resides? Charcoal Point is a bunch of buildings, strung along a point for a mile or two, and back up on the hill, and those people up there in Alaska who are not married, those men going up there to seek a fortune one way or another, are liable to go and bunk with a friend or to rent a cabin and buy some bacon and beans and keep batch; and when the fishing season is over they go and sit around in the hotels and play solo. That is the only place they have to go—when the saloons were there they kept open all night, and provided a place for the unfortunate prospector; but since we have had prohibition those fellows have had to go somewhere, and they hang around the hotels or go home. And this witness did not know the fellow's name or where he ate or slept.

Now, again, I do not know what the evidence is about how "that fellow" voted. Althouse testified that he was brought to the polls by Mahoney in an automobile; but his testimony is reckless about Mahoney, toward whom he was very unfriendly. The testimony shows that Althouse was picking on Mahoney on every conceivable—on every possible occasion. Now, there you have the evidence. Here is a fellow that may not have existed.

There was another man. A Jew, I think he was a tailor from Seattle, comes down there with Mahoney and the rest of them in the machine, and he voted. I never saw him in Charcoal Point, the only place I ever saw him was Ketchikan. I don't know where he eats or sleeps.

We do not know enough about "this fellow" to make it possible for us to find him and contradict this evidence.

Now, here is Wickersham's watcher brings in this "fellow." Supposing he had brought in enough of this kind of people to change the result. Supposing he had said Mahoney hauled down 20 in all; that he never saw anywhere else than Ketchikan and don't know where they ate or slept. "Did they reside in Charcoal Point? No; they don't." That is a conclusion, of course. "No; they don't." That is not testimony. You can not take a man's testimony in a case of this kind to the conclusion. Now, I submit that this is not the kind of evidence that you can act on in this case—this evidence with reference to the tailor.

Now, this W. Chapman swore in his vote in Ketchikan. The witness, Hunt, who was either one of the Republican judges at Ketchikan, where the city council appointed the judges, or it was his son—both ardent Wickersham supporters—testified that Chapman was a superintendent for the Salt Chuck Mining Co. How long he had been a resident of Alaska the evidence does not disclose, except that he swore in his vote when challenged.

Now, here is a man who lives in Alaska, and who is a man of sufficient responsibility so that he is made the superintendent of a mine. It is situated out in what you gentlemen would say was out in the country. It is off across the water, on an island. How long he has been a resident of Alaska the evidence does not show. And the only evidence that he voted for Sulzer is the evidence of Hunt, a strong Wickersham supporter. The record (p. 84) shows:

Q. Did he have any residence here?—A. I don't consider so.

Q. He was challenged?—A. Yes.

Q. What became of his challenge?—A. He swore in his vote.

Q. Do you know where his residence was?—A. I think he could claim a residence out to the mine; I understood he had a house built out there at the mine at Kansaan.

Q. Did Mr. Chapman have a wife here in the hotel at that time?—A. He did.

Q. What was she doing here?—A. She was said to be here for medical treatment; she wasn't well.

Q. But his home was over at the mining claim; they had a residence over there?—A. I understood the company furnished a house, just a residence for the superintendent, there.

So that he would be over there, and could be over there, at the mine as superintendent without any intention to stay there, except as far as the performance of his duties was concerned, and he might retain his legal residence in Ketchikan, if he did not intend to abandon it; and there was no other place he could vote, and he swore in his vote. The presumption is always in favor of the legality of a vote. That is the general rule, and I think if you gentlemen apply the general rule in this case you can not throw out that vote. That is no evidence, anyway, that he did not live in Ketchikan or as to how he voted.

As to William Semar and his wife, there is not any evidence as to how they voted and very unsatisfactory evidence as to whether they lived in Ketchikan or not. He always had lived in Ketchikan, and the same Hunt, this Wickersham supporter, says that he was a resident of Ketchikan, but he had sold out his residence there about two years prior to the election and was interested in a cannery out at Sitka. Now, there are a whole lot of people in Ketchikan interested in canneries, and they get interested in canneries and locate canning plants off somewhere away from anybody and are there during the

fishing season—leave a watchman there during the winter—and they may spend the winter in Ketchikan, or, if they make enough money, they may go to Europe; and they may sell their house—you can even sell your house and retain your residence, and travel in Europe, or they may rent their house; selling or renting your house does not affect your residence. This man is a substantial business man in Ketchikan; had no house in Ketchikan at that time. Now, here is the evidence, the strongest evidence there is against his right to vote:

Q. What about William Semar?—A. He was a resident of Ketchikan, but he had sold out his residence here about two years prior to election and was interested in a cannery out at Sitka.

Q. Did he have any residence here at that time?—A. No.

Then, this is my note:

The witness undoubtedly referred to a dwelling house and not to a legal residence.

Q. How long prior to that time had he been a resident here?—A. In the neighborhood of two years.

Q. They were in this early group that voted?—A. Yes.

Q. Did he have any home here or place of residence?—A. No home.

Q. How long had they been here prior to the date of election?—A. A few days.

Q. Not 30 days?—A. No.

Now, unless this man has abandoned his residence in Ketchikan and acquired one elsewhere, he is entitled to vote in Ketchikan. And you are to determine from the evidence whether that is sufficient to throw out that vote, if you can find out how he voted; but there is not any evidence as to how he voted whatever, that I have been able to find in the record. I do not know why this testimony was taken; so I do not want you to overlook that. I have found no evidence as to how Mr. and Mrs. Semar voted.

Now, we come to Gus Gillis and his wife, and the contestant made quite a show of fairness with reference to Gus Gillis and his wife, and stated that he would not insist on raising any question about those votes, and showed you a letter from Gus Gillis, who lives in Nome. He is a traveling man and lives in Nome. Now, Gus Gillis did not vote in Ketchikan, and I showed it up in the examination at Ketchikan, and Mr. Wickersham conceded that he was mistaken in making that contention, but makes it again in his brief. But there is no use in talking about it.

Mr. Wickersham stated in his argument the other night that he would not contend that the votes of Gus Gillis and his wife should be deducted from the Sulzer vote. So, although he has that in this list, they are to be ignored by you. They did not vote at Ketchikan.

Mr. WICKERSHAM. If the record shows they did vote at Ketchikan, then, of course, my objection would be good; but I said I am in so much doubt about it——

Mr. GRIGSBY. Well, if the record shows that Gus Gillis and wife voted at Ketchikan, then you have no evidence whatever that they did not live there.

Mr. WICKERSHAM. Oh, yes; I have.

Mr. GRIGSBY. No; you have not. You have stated that the only Gus Gillis and wife that could have voted illegally lived in Juneau. Now, where does the other Gus Gillis and wife live? You have not a leg to stand on either way.

Now, Steve Regan is deputy United States attorney at Ketchikan; had been down there over a year before the election and rented a house for his family. He lived up at Haines on a homestead. Steve was actually and physically there, living in a rented house for nearly a year before the election, and left his wife and children up on the homestead. They came down once or twice and visited and went back, and came back shortly before the election, not 30 days, though, the last time; but they were there and voted—his wife did, and himself. And the judge wants you to throw out those votes on the theory that if you do not do it that Mrs. Regan may lose the homestead. Mr. Regan has since been murdered in Ketchikan.

Now, Mr. Regan—I do not know on what possible theory he contends that Regan's vote was illegal. He was there, and rents a house and lives in it, and does every act and thing he can, and says it is his home, and rented a house for the purpose of moving his family into it. And the law does not prevent him from abandoning a homestead if he desires to, but under the law he does not abandon his homestead by leaving it. After he has resided on it three years continuously he has a right to leave it and obtain a residence somewhere else, provided he continues the cultivation of it. I have an opinion here from the Commissioner of the General Land Office in which it is stated:

As a general proposition I have to advise you that where a homestead entryman complies with three-year law fully and then leaves the land for an extended period, he is not precluded from subsequently making proofs within the statutory period, and he may do so although he has resided elsewhere, provided he continues to cultivate the land during his absence.

So there is nothing inconsistent with Mr. Regan acquiring a legal voting residence at Ketchikan and preserving his homestead right at Haines. And even if there were, in this proceeding you could not presume that he maintained his homestead residence and did not intend to reside at Ketchikan. He testifies that he complied with the law in 1917, that he had so fulfilled the homestead requirements. He testifies that he had established a residence at Ketchikan, and that is his home; that is the home of his family. That is the testimony in the case, and he was actually there, in a rented house. So you can not throw out those votes on the theory that Mr. Wickersham advances that possibly Mrs. Regan may be put out of her homestead. He says that the wife's residence always follows that of her husband—

Mr. WICKERSHAM (interposing). No; I did not say that. In this case I said just the other thing.

Mr. GRIGSBY. You said it was a general proposition. You say even that Mrs. Donald H. Tyler—now, there is a woman who lives in Valdez—lived in Valdez for five years, continuously up until November 1, 1918; for five years continuously she resided in Valdez. Then she married a soldier, who enlisted from the State of Iowa, and Mr. Wickersham contends that she thereby lost her vote, because her residence followed this soldier's back to the State of Iowa, although she had never been there. Now, Mr. Wickersham can not blow hot and cold with this committee. When he advocates that kind of a doctrine in one case he can not switch around and advocate another kind in another case.

Now, if the wife's residence follows the husband in any case, it should be where the husband comes down to a town and rents a house, not a room, but a house for his family to live in, and has them come down there, and says he intended that that is where they should live; that is the home. She not only constructively follows his residence, but she actually came down there, and then went back during the summer to Haines, where they had the most delightful climate in the world, and grow the biggest strawberries—nice, bright, sunshiny weather, as everybody knows. A wife and two or three children went up there in the summer in preference to staying down on the water front in Ketchikan, where it rains all the time. Except for the fact that that is a very prosperous town and has very good people in it, it is a very disagreeable climate and place to live. Now, none of that is inconsistent with her residence in the town of Ketchikan.

Now, that disposes of all of these alleged illegal votes which I dispute. I have conceded 10 and I have disputed 13—that is, in southeastern Alaska—in the Ketchikan precinct. Now, there are a few up around Juneau. The only one of them that I want to dispute is E. G. Morrissey—

Mr. CHINDBLOM. How many are there at Juneau? How many were challenged there in Juneau by Mr. Wickersham?

Mr. GRIGSBY. There are seven. Those votes—the testimony was taken at Juneau, but the votes were cast at various precincts, and this comes under the head of "individual frauds in southeastern Alaska."

Mr. CHINDBLOM. But of these seven you now dispute only one?

Mr. GRIGSBY. Those 7 were included in the original 23. There are 23 alleged frauds in southeastern Alaska; Charcoal Point, Ketchikan, and other places, 23 altogether, and I have conceded 10 out of the 23. Now, there are 7 more that I have not discussed of those 23, and 6 of them are those that I have already conceded, and 1 of them is the one I dispute.

Mr. HUDSPETH. Under what head do they appear in Mr. Wickersham's list?

Mr. GRIGSBY. "Individual frauds in southeastern Alaska."

Mr. DOWELL. But those 6, they are 6 of the 10 that you concede?

Mr. GRIGSBY. Yes; there is a difference between us of 13. E. G. Morrissey was Sulzer's private secretary. He was a legal resident of Fairbanks, formerly, and was outside with Mr. Sulzer, and went back during the campaign and rented a room in the hotel, and was there several months before election, but not all of the immediate 30 days immediately prior to the election, but got back in time to vote at Juneau. He was there—the evidence shows, the evidence of Mr. Bartlett, that he kept his room at all times in the hotel, did not give up his room at all. I do not want this to be considered in the case at all, but I know that he did, because I roomed across the hall from him. That does not make any difference; it is not necessary that I corroborate it. The hotel keeper says he did not give it up. I know that he was away, only by hearsay. It is conceded that he went away for a while, out in other portions of the division, but I do not know how long he was gone, and the record does not show,

that I know of. I went up to Fairbanks, and I lost my vote, but Morrissey got back to Juneau and voted.

Now, when you come to consider this case you have to consider that that may be a deciding vote. Now, Sulzer has already lost his own vote. We have conceded that. Now, is the secretary to lose his vote, too? On a strictly technical construction of the statute? The question is, did he have a legal residence sufficient for voting purposes in the precinct he had been in, in which he had a residence? He had rented a room which he was paying for during all the time, for several months prior to the election, with the exception of a few days during the 30-day period. I venture to say, gentlemen, that a seat in Congress should not be disturbed on account of a man receiving a vote of that kind—a legal vote in every particular. Supposing he had not had a residence there at all, then you would have to determine whether this Territorial law is good or not. But now, we are arguing on the proposition that if a vote is in the wrong precinct the vote is to be discredited. Now, here is Morrissey, who does go there and establishes a residence in that precinct—which you can do by stopping at a hotel—rented his room by the month, kept it up until after the election, and was gone a few days within the 30-day period. I do not think you will have much trouble with that individual vote.

That disposes of all the individual alleged illegal votes in southeastern Alaska. The next subject——

Mr. O'CONNOR (interposing). Before you go on, what other offices besides the members of the Territorial legislature and the Delegate to this Congress are elected by the people of Alaska? The attorney general, as I understand?

Mr. GRIGSBY. Yes.

Mr. O'CONNOR. Is that the only one?

Mr. GRIGSBY. Road commissioner.

Mr. O'CONNOR. When is the attorney general elected?

Mr. GRIGSBY. Every four years, at the general election.

Mr. O'CONNOR. Was he elected at the time that Sulzer and Wickersham ran for Congress, and which case is now before this committee?

Mr. GRIGSBY. No, sir; there was no election of attorney general then, because it is a four-year term. I was the first attorney general; the legislature created the office of attorney general, and my term would have expired next March.

Mr. O'CONNOR. The road commissioners are elected in the political subdivision?

Mr. GRIGSBY. Yes; in the judicial division; they are called road divisions.

Now, I am going to discuss the Cache Creek proposition. You will remember what the Cache Creek proposition was. The polls, it is alleged, were opened before 8 o'clock in the morning and most of the votes cast before 8 o'clock; that is the allegation. There is no allegation of fraud, and Mr. Sulzer carried the precinct, I think, by a vote of about—a majority of 23 or 25. Now, Mr. Wickersham says in his brief:

The undisputed testimony of all witnesses called shows, without any denial or exception on Mr. Grigsby's part, that the ballots were deposited in the box

between the hours of 4 a. m. and 5.15 a. m., at which hour the voters left the polling place, some for Seattle and others for other distant points in Alaska, and all were out of the Cache precinct before 8 o'clock.

That is his version of the evidence; that the undisputed testimony of all witnesses shows those things. Now, if you will read the evidence of all the witnesses—there were six, I think, you will find that he is wrong in these respects in that statement; the undisputed testimony of all witnesses does not show that the ballots were deposited in the box between the hours of 4 a. m. and 5.15 a. m.; it does not show that at that hour the voters left the polling place; it does not show that some went to Seattle and other distant points in Alaska, and it does not show that all were out of the Cache precinct before 8 o'clock. There is no evidence, except of one witness, as to what time these polls did open, and he was not a citizen of the United States, and did not vote, and there are other witnesses who testified, and the gist of their testimony is that the polls may have been open earlier than 8 o'clock in the morning.

Mr. ELLIOTT. Mr. Grigsby, did you get any testimony along that line, as to when these polls did open, or try to get it?

Mr. GRIGSBY. Why; I did not.

Mr. ELLIOTT. Why did you not?

Mr. GRIGSBY. Why; I did not personally. Personally, I never saw this evidence until it came down here in the shape that you gentlemen saw it in the record.

Mr. ELLIOTT. This was taken by way of deposition, was it not?

Mr. GRIGSBY. Yes.

Mr. ELLIOTT. And was not notice served on you?

Mr. GRIGSBY. On my agent, yes; but personally, I did not know anything about it.

Mr. ELLIOTT. Did you have anybody present at the taking of these depositions?

Mr. GRIGSBY. Yes.

Mr. ELLIOTT. Did they make any attempt to get any other evidence than what Wickersham forces in here?

Mr. GRIGSBY. Not that I know of. I suppose that they took the evidence and sized it up and considered that it was probably a complete account of the transaction. Here are six witnesses, none of them charged with being disreputable, testify to the circumstance, and I do not think the votes are in dispute, except by Mr. Wickersham.

Mr. ELLIOTT. Who were on the election board at that time?

Mr. GRIGSBY. I have the names, but they are not in the record.

Mr. ELLIOTT. Was it not possible for somebody to get a statement from these men who did hold the election, as to what time they opened and closed the polls?

Mr. GRIGSBY. I should think that it would have been; I should think that anybody seeking to throw out that vote would want to do it by fair and satisfactory evidence, and show that somebody was injured.

Mr. HUDSPETH. The evidence shows that the polls opened there a little early?

Mr. GRIGSBY. Yes; I think so.

Mr. HUDSPETH. Now, is there any evidence as to when the polls closed?

Mr. GRIGSBY. None whatever.

Mr. HUDSPETH. Is there any evidence that anyone who offered to vote, or desired to vote during that day, was deprived of the privilege of voting by the fact that the polls were closed?

Mr. GRIGSBY. There is none, and none claimed.

Mr. HUDSPETH. The evidence shows, as I recall, that they opened the polls early, they voted early, and a number left; is that it?

Mr. GRIGSBY. Yes; I think there were 23 left early in the morning.

Mr. HUDSPETH. Well, how many votes were polled there?

Mr. GRIGSBY. I will look that up and tell you. Of course, there is no evidence that every one of those who left was a voter, Mr. Hudspeth.

Mr. HUDSPETH. No; I do not suppose that. Well, then, is there any evidence that the ballot box was taken out by these people who left early in the morning?

Mr. GRIGSBY. No, sir. The vote stood 23 for Sulzer, 2 for Wickersham, and 1 for Connell; 26 votes in all.

Mr. DOWELL. What do you say about the law, Mr. Grigsby? Judge Wickersham presented his theory of it that if the polls are opened before the hour provided by law, or remain open after the time of closing as provided by law—is the vote cast before or after the time prescribed an illegal vote?

Mr. GRIGSBY. The authorities generally hold that there is a different state of facts presented by having the polls open after the closing hour, particularly when the result at the time of the closing hour can be ascertained. Now, a certain man is ahead at 6 o'clock, which is the legal hour for closing the polls; and then they are kept open afterwards and the result is changed by their being kept open until 10 o'clock. In such case it has been held that those late votes were illegal.

Mr. CHINDBLOM. But suppose that certain voters can not present themselves before the polls open, and for their accommodation the polls are opened ahead of time, and they do vote, and it appears that if the polls had not been opened ahead of time they would not have voted; is not that about the same?

Mr. GRIGSBY. Yes; if it would appear that they would not have voted; but it does not appear in this case that they would not have voted. The probability is that if they had not voted when they did they would have waited until they could. But a different situation presents itself in the evening, because then it is too late to change the plan so as to comply strictly with the law. It is changing the hours for the accommodation of the voters.

Mr. DOWELL. Are there any authorities that you have on that question?

Mr. GRIGSBY. Yes.

Mr. DOWELL. That will give us light on the question as to whether or not the fact itself of voting before or after the time prescribed by law makes the vote an illegal one?

Mr. GRIGSBY. Yes, sir; McCrary on Elections, section 165, after reviewing the authorities which are in conflict, says:

From all the conflicting authorities upon the subject the following may be gathered as the governing rule:

1. If the statute fixing the hours during which the polls shall remain open expressly declares that a failure in this respect shall render election void, it must be strictly enforced.

2. But in the absence of such a provision in the statute, it will be regarded as so far directly only as that unless the deviation from the legal hours has affected the result it will be disregarded.

The latter clause refers to the result being affected by illegal votes cast before or after the legal hour, or to legal voters being prevented from casting their votes by a deviation from the legal hour; in other words, to be material, the deviation from the legal hours must affect the result by causing the reception of illegal votes or the rejection of legal votes.

Now, that covers this case. It is not shown that any legal voter was deprived of his vote by the fact that the polls were opened half an hour or an hour earlier than usual, or that any illegal vote was received on that account, and the preponderance of the testimony is that they got up early in the morning and probably voted along about 7.30—there is a slight variation.

There is another rule comes in there which shows he means by it affecting the result:

3. If the deviation from the legal hours is great or even considerable, the presumption will be that it has affected the result and the burden will be upon him who seeks to uphold the election to show affirmatively that it has not. But if the deviation from the legal hours is but slight the presumption will be that it has not affected the result and the burden will be upon him who attacks the validity of the election to show affirmatively the contrary.

4. If the number of votes illegally cast after the legal hours and the persons for whom cast can be shown they may be rejected from the count (citing a case holding that where the polls by law were required to close at 7 o'clock in the evening the candidate who received the most votes before 7 p. m. was elected, though the polling place was kept open until 10 o'clock, and when closed the other party had the majority).

That is the one I told you about where the result was changed. Now, there might be circumstances where—people are supposed to meet on equal terms in an election; they are supposed to fight it out on election day, to use all legitimate means to get their people to the polls, and one candidate should not take advantage of the other one. He should not get election officers to accommodate him, when he finds he is beaten at 6 o'clock, to keep the polls open while he rushes off and gets people from a distant place, because he is getting an advantage over the other fellow. Now, that is the theory of that.

Mr. HUDSPETH. What have you on opening before hours?

Mr. GRIGSBY. I have not found any case that says that the opening of the polls prior to the opening hour will vitiate the election in any way, unless it was the night before. There is one case where they were opened the night before, not on election day at all.

Mr. HUDSPETH. Let me ask you right there, Mr. Grigsby, what time does the sun rise in Alaska at that time of the year?

Mr. GRIGSBY. Well, that is pretty far north; I was coming to that. In November, the days get short very rapidly up there, so that I should say that it is dark until about 7.30; twilight at 7.30 or 8 o'clock that time of the year. It depends on whether it is a cloudy day or not. The change is very rapid. I have lived in that exact latitude; I lived a little north of that. Of course, by the 21st of December in Nome you have artificial light all the time except between about 10 in the morning and 2 in the afternoon. You can walk on the beach there and see the sun rise, and before you stop for lunch it will go down.

Mr. HUDSPETH. Have you ever been to this exact place?

Mr. GRIGSBY. No; not this place. It is pretty near as far north as Nome, and as the testimony shows, the fellows that have been working there on this dredge had been getting up and going to breakfast by lamp light, so that everybody concedes it was dark.

Now, here are some more cases:

It appears that a statute requiring that the polls shall be opened till sunrise and kept open until the setting of the sun is so far directory that before an election can be set aside because of a deviation from the statute in this respect it must be shown that legal votes were excluded or illegal votes received in consequence thereof.

Now, were any illegal votes received in consequence of the opening of these polls early? That is the point. If it was kept open after hours, that is, or if it was closed too soon, you will have to show that legal votes were excluded. The deviation itself does not make any difference under this authority, if no legal votes were excluded or no illegal votes received. That is just the rule.

Mr. DOWELL. What is that authority?

Mr. GRIGSBY. That is "*The People v. Cook*, (8 N. Y. 67); *Soper v. Board Co. Com'rs* (46 Minn., 274)."

Another case:

A slight deviation from the direction of the statute in this respect will not render void the election unless it is fraudulent and operates to deprive legal voters of their rights, or unless the statute in express terms makes the hour of opening and closing the polls form the essence of the election.

That is if it is mandatory. That is "*Cleveland v. Porter* (74 Ill., p. 76)."

Now, in election contests, reading from Rowell's Digest of Contested Election Cases, which Judge Wickersham read from the other day, here is the only case that I found that is anywhere near in point here:

The objection made that the soldier's election law requires the polls to remain open at least 3 hours is regarded by the committee as frivolous when he makes no effort to prove that any voter was prevented from casting his vote, but only objects to votes that were cast, and where no attempt is made to prove fraud.

You see, that is the converse of the present case.

Mr. DOWELL. What is that citation?

Mr. GRIGSBY. That is *Coombs v. Coffroth*, in the Thirty-ninth Congress, second, Bartlett, 141:

Where a poll was not closed until some time after 6, the committee expressly refrained from deciding whether the vote received after 6 o'clock should be rejected or not; but where polls were closed after 6 o'clock and afterwards reopened again, they rejected all of the votes received after the first closing.

There are some other cases, but they do not seem to be anywhere near in point. That is on page 749 of this digest. The weight of authority, as I can find it, is unless some illegal voter was enabled to vote or some legal voter was prevented from voting, that a deviation from the statutory hours of closing shall, in the absence of proof of fraud, not affect the result.

Now, the testimony is, of one witness, that they voted as early as between 4 o'clock and 5.15. They got up at 4. Now, you gentlemen, in considering these things, you must consider the kind of a country it is, and the general looseness of the election laws, adapted to the convenience of the people, and the distance they are from any place

where the correct time is known; and if you ever lived in a mining country you know that they talk about "camp time" and "town time," and sometimes they are an hour and two hours apart; and you will hear whistles, even around Nome, there, we would hear noon whistles blow for about an hour—only four miles from town. Now, up there where they have no telephone or telegraph, and their election is ordered, and it happens that they have shut the dredge down just before the election day, and the camp is going to close—suppose that they do all get together and say: "Let us open up as early as we can in the morning." Now, the judges did not go out. This fellow "Red" McDonald—he is an alien, a man whom Mr. Wickersham relies on—he names: Charles Irvin, Harry Kingsbury, Sept. Irvin, Joe —, Dave Lawrence, Fred Peleivor, Gerhart, Strom, Red McDonald, Mr. and Mrs. Wheelock, Al. Wolf, Chas. Herman, Davis, Brennem, McGroarty, Mattocks, Frank Magnolia, Dick Anderson, Mr. and Mrs. Archie Anderson, Frank Inglehorn, Dixon, and Whiting, who left that morning.

And the testimony is that there were several others remained behind, and the election returns will show that the judges are not among that list of names of those that left. When you get your election returns of this precinct you will find that the judges of the election were not in that list. Now, the burden is not upon me to prove anything. I do not doubt but what from an analysis of the testimony that they voted a little before the legal hour—not much, unless you are going to take one witness's testimony for it. The rest, I think, give an estimate of the time. Now, here is the testimony of Harry Kingsbury:

Q. Did you leave on the fifth day of November?—A. Yes.

Q. How many were leaving at that time?—A. Well, there were probably 25 or 30.

Q. Did that include all of the population of that place?—A. No, sir.

Q. How many remained?—A. Well, for the Cache Creek Co. there were five or six men.

Now, there is no evidence that there were not other residents of the precinct, and there is no evidence that all of these men who went out were legal voters, or did not; but some men remained behind, and the judges of the election are not among those that this man testified went out early in the morning.

Mr. CHINDBLOM. The man who testifies as to the approximate time when the voting occurred; what does he say?

Mr. GRIGSBY. McDonald? It is on page 292 of the record. He says 4 o'clock they got up, and that they were out of the camp by 5.15. He is very positive in his testimony.

Mr. CHINDBLOM. Was there any other witness offered by the contestants who testified otherwise on this subject?

Mr. GRIGSBY. Well, I can best tell you—I have a short review of their testimony. It would not take me long. There were six witnesses testified. I will quote James Wheelock:

Q. Do you know what time the polls opened that morning, Mr. Wheelock?—A. I do not.

Q. Did you vote?—A. I did.

Q. At what time of day did you vote?—A. I can not say, I never noticed the time.

Q. What was the condition of the light at the time you voted?—A. Lamp light.

* * * * *

Q. It was dark then outside?—A. Yes; it was.

* * * * *

Q. What time did the day shift go to work?—A. At 7 o'clock.

Q. What was the condition of the light at 7 o'clock?—A. It was not daylight at 7 o'clock.

* * * * *

Q. You can not say from your own knowledge that they opened before 8, can you?—A. No; I can not say for certain. I rather think it was.

Now, you gentlemen may not understand that, but I can. I know what it is to get up early in the morning and get breakfast and get out on a trip in that country, and you do not know what time it is. You get up pretty early and get in all of the travel you can before dark, and you do not stop for lunch; you make a station where you will be secure against a blizzard.

Now, we will take Mrs. James Wheelock. She testified that:

She was positive that on the morning of election the Cache Creek Dredging Camp was breaking up; the men were leaving camp. She did not know what time the polls opened but was positive the men who left left before 8 o'clock.

Now, she is not a hostile witness to Mr. Wickersham, otherwise she would not be positive they left before 8 o'clock, because if they left before 8 o'clock they must have voted before they left. Now, they got up in the morning and packed up; they had their breakfast and they voted and then left. There is evidence that it was before 8 o'clock.

Mr. CHINDBLOM. What page of the record?

Mr. GRIGSBY. Page 285, Mrs. James Wheelock. Now, she says that that was not from looking at her watch, but just her opinion, on cross-examination.

Now, here is another, Harry Kingsbury; I read his. Here is what he says about the time, on page 288: That they left camp that morning when it was "just getting daylight." Daybreak was about 7.30—that he voted "the last thing before he left." Now, gentlemen, there is positive testimony of Harry Kingsbury that he voted some time about daybreak, which was 7.30. It was getting daylight. Daybreak was 7.30. He voted the last thing before he left.

Mr. CHINDBLOM. Was it before 8 o'clock?

Mr. GRIGSBY. I can not say definitely; but it could not have been before 7 o'clock, because he left when it was just getting daylight. Daybreak was at 7.30, and he voted the last thing before he left. Now, when it is dark it is easy to imagine that it is 4 o'clock in the morning, or the middle of the night. But the contestant says that the "undisputed testimony of all the witnesses shows that ballots were deposited in the boxes between the hours of 4 a. m. and 5.15 a. m." Then a witness says he voted the last thing before he left, and that was 7.30; so Mr. Wickersham's evidence is repudiated.

Mr. ELLIOTT. Well, the evidence shows that all of these votes were cast prior to 8 o'clock?

Mr. GRIGSBY. Yes; where it shows anything at all. Here is the testimony of Charles McGroarty:

Q. Do you recall the conditions of the camp in regard to closing up and leaving on the morning of the 5th?—A. The work had closed down and we were in a hurry to leave and were getting ready.

* * * * *

Q. Did you vote?—A. Yes, sir.

Q. After or before breakfast?—A. After breakfast.

Q. What time when you voted?—A. Can not say: I went to the polls and voted by lamp light.

* * * * *

Q. What were you doing there?—A. Working in the mine.

Q. For the Cache Creek Co.?—A. Dredging.

Q. What time did you go to work?—A. 7.30.

Q. What was the condition of the light in the early part of November when going to work?—A. Some packed a light. I never did.

You gentlemen know, it was probably just getting light; every day getting darker, as everybody knows.

Now, Charles Irvin, he testified: "That on the morning of the election day he got up by an alarm clock; that the alarm clock was usually set for 4.30." Irvin was the cook. Everybody knows, of course, that the cook gets up in the middle of the night, when cooking for 25 or 30 men. "But he was not sure what time it was set for on that morning; that the day shift went to work at the dredge at 7 o'clock and at the coal mine at 7.30; that they had breakfast by lamp-light; that he left camp with the rest of the bunch that morning—did not notice the time." He was the man who had the time.

Malcolm McDonald testified:

That there were over 30 men employed by the Cache Creek Dredging Co.; that 23 men left camp the morning of election day; that at 4 o'clock in the morning he was out in the yard getting ready, packing the sleds; that they had breakfast about 4 o'clock; that it was dark when they left camp; that the dredge is about a mile from the camp.

Q. Do you remember anything about the condition of the light?—A. Yes; I recollect that it was not so dark as we passed the dredge. It was breakfast daylight, still I could not see the head team. There were three or four teams ahead of me.

He left the camp at 5.15; the dredge was a mile away; it would not take over 20 minutes to go that mile, and it would not be breaking daylight at 6 o'clock. It would be probably darker than any time during the night. This man is not a voter, and not a citizen of the United States. Now, if they left there about 5.15 in the morning, gentlemen, then every one of these other witnesses has perjured himself. Now, they might be mistaken an hour in time, or 30 minutes, but as between having breakfast at 4 in the morning and having it at 7.30, and voting at 4.30 and voting at 7.30 there is no room for such a difference of opinion as to the correct time.

MR. O'CONNOR. What was the idea of starting early?

MR. GRIGSBY. The idea is that in that country when you start out on a day's journey you have to make a certain point or you have no place to pass the night.

MR. O'CONNOR. The idea is to cover as much territory by daylight.

MR. GRIGSBY. Certainly, and to get some place where you can stop.

MR. O'CONNOR. Getting away too early would be just like arriving too late?

MR. GRIGSBY. No; you get up in the morning and get your breakfast, and the travelers in that country arrange to start as soon as they can see to travel, as soon as they can see the trail, and if anything happens they can go back; you are always taking a chance in that country, even in daytime. When you start you have to know where—

MR. O'CONNOR (interposing). What I meant was, if you got up early and started on a journey in order to cover as much territory as possible by daylight?

MR. GRIGSBY. Yes; you want to get to your objective point before dark; that is the idea. You will even start out in the dark.

I have done so myself many times and so has Judge Wickersham. Now, here are these people, white people, that swear they could not tell what time it was, that it was about daylight, that it was about 7.30, and what you will have to conclude from this evidence is that there was a slight variation probably from the legal hours in the opening of the polls, and there has been nothing showing that any legal voter was disfranchised by it, or that any illegal voter was run in. Mr. Wickersham says in his brief, "Imagine the spectacle of my Republican watcher coming along there at 8 o'clock and he finds the polls closed, the judges gone, the ballot box gone; everybody that has voted has gone to Seattle or to remote points in the Territory."

There is no evidence that he had a watcher, no evidence of anything of the kind, when his watcher got there, if he did have a watcher, or that anybody went to Seattle or to remote points. That is a vivid picture of what an awful shock it would be to a watcher. If he showed that they ran in a lot of aliens there at 3 o'clock in the morning and voted before the watcher would have a chance of challenging them, there would be something to his contention. But these boys up there just had a trip to make, and they did not want to lose a day's time. That is the time of year when fall changes into winter, and the blizzards come, and they wanted to go when the going was good, and a man can not exist up in that country after he has no business there. He has got to go. Suppose they did open the polls an hour earlier or two hours earlier. With no evidence to show that they did not keep them open all day, do you think that this House or this committee is going to unseat a Member in the absence of any fraud shown? I am willing to submit it to you on the facts in this case.

I can imagine the answer Mr. Wickersham would make if the shoe were on the other foot in this case, and we were trying to throw that vote out. Mr. Wickersham is probably more familiar with the conditions in the interior of Alaska than I am, and if in any country you should construe your election laws liberally in these respects, it certainly is in Alaska. In a frontier country that is not a country where there is an opportunity for going out and grabbing a lot of illegal voters and running them into the polls and committing fraud by variations of the legal hours, and these laws have been construed liberally even in the States, according to the decisions I have read.

Now, are you going to put an absolutely strict construction on the law up in Alaska and hold us down to the minute, when it has not been done anywhere else? I am not afraid that you are.

Now, the next fraud I wish to discuss is the 40-mile precinct election fraud, as it is alleged to be.

Before coming to that there is an alleged fraud in the Copper Center precinct, referred to on page 151 of my brief. Now, the judge did not, I do not think, ask you to take that contention seriously. It seems that the United States marshal came along to Copper Center, where Sulzer never received much of a vote, and where they had some disagreement about where the post office ought to be, and the residents wanted it in a certain place, and putting the worst view on the situation, Erwin told one of the prominent citizens of this town,

which cast 10 votes afterwards, that if the boys would get out and do something for Sulzer in the primary, he would use his influence with Sulzer to get that post office put back where they wanted it, and they did get out and they all voted for Sulzer in the primaries.

Sulzer, either for that reason or for some other reason—the evidence does not show—did comply with the unanimous opinion of the community and put the post office where everybody wanted it. There was not anybody that was against it. I think there was one vote for Wickersham in the primary. Then the marshal wrote the work back to this fellow, “Now, you did fine, and Sulzer got the post office. Now show your appreciation this fall in the election.”

Mr. Wickersham says the consideration had been delivered. They were under no further obligation, but they had a right to express gratitude. So in the fall they gave Mr. Sulzer 10 votes. Now, under what theory are you going to throw them out? It is ridiculous.

Mr. O’CONNOR. How many were there for Wickersham?

Mr. GRIGSBY. None. It seems that everybody that was living there was satisfied, and grateful, and they voted for Sulzer. Now, Mr. Wickersham does attempt, by leading questions, to make this witness, Blix, testify that the consideration extended to the fall, but here is what he testified to when he was first examined. [Reading:]

What sort of an arrangement did Judge Erwin think ought to be made in consideration of his procuring these things for you and the patrons of the office?—A. That they should, in return for that, favor Mr. Sulzer at the primary election.

That is Mr. Blix’s testimony on page 693 of the record. [Reading:]

Q. And at the fall elections, too?—A. At that time the general election wasn’t spoken of.

Now, I am going to turn to the record and read a little more, page 693 of the record. This Ringwald Blix is an awful ingrate. He put up this job, and then preserved all the documents and turned them over to the contestant. I suppose he was the man who was still there at the date of the primary election and did not even deliver the goods. This Ringwald Blix testified. [Reading:]

Q. Where were you born?—A. In Norway.

Q. Are you a citizen of the United States?—A. Yes, sir.

Q. A full citizen?—A. Yes, sir.

Q. How old are you?—A. 47.

Now, he was formerly the postmaster and the United States commissioner. He owned the building where the post office was kept. [Reading:]

Q. And you naturally wanted the post office to be kept in your building?—A. Yes, sir.

Q. Was there a proposition of removing the post office from your place?—A. There was.

Q. Where to?—A. To John McCreary’s place.

Q. About how far from Copper Center was that?—A. A half mile north of Copper Center.

Q. Outside of the settlement?—A. Yes, sir.

Q. And away from where people did business?—A. Yes, sir.

Q. Did you oppose that movement to move the post office?—A. I did.

Q. Did the people there take a good deal of interest in Copper Center?—A. Yes, sir.

Q. What was done about the matter, Mr. Blix; did you consult the Democratic officials about the matter?—A. Yes, sir.

Q. Whom did you consult?—A. One Judge Erwin—

You gentlemen do not know Judge Erwin, and I have to smile when I read this. [Reading:]

the United States marshal of the fourth division. I think I can explain that.

Q. If you have any explanation to make about the matter, go ahead and do it.—A. About January, 1918, I had contracted to dispose of my interest there in the hotel and mercantile business to a man by the name of Ditman; and as I wanted to be relieved of the postmastership, naturally I recommended him as my successor to the Post Office Department, and I wrote them to that effect and recommended this man Ditman. In the meantime John McCrearie heard about my resignation as postmaster, and he took it up with one T. J. Donohue, the Democratic committeeman, to get the appointment himself.

Q. Mr. Donohue resided at Valdez?—A. Mr. Donohue resided at Valdez, and Mr. Donohue took up the matter with Mr. Sulzer at Washington at that time, the Delegate from Alaska, and I found out about it and took up a petition signed by all the patrons of the office, objecting to the appointment of Mr. McCrearie, as well as the moving of the post office to his place. About April 19 Judge Irwin—

Q. That is Marshal Irwin, of Fairbanks?—

He is a great friend of Mr. Wickersham.

Mr. WICKERSHAM. If that goes in the record, let it go in right. He is one of my enemies.

Mr. GRIGSBY. I can say it as you did the other day.

Mr. WICKERSHAM. The smile does not go into the record.

Mr. GRIGSBY. Neither did the sarcasms where you read them in.

Mr. CHINDBLOM. Let the record show that you smiled.

Mr. GRIGSBY (reading):

A. Marshal Irwin, of Fairbanks, came through Copper Center on his way to the States, and I took up the matter with him regarding the appointment of the proper man that the people in the community wanted for postmaster; and knowing that Judge Irwin would have more influence in Washington than probably Mr. Donohue and Mr. Sulzer combined, I took the matter up with him, and he led me to believe that he could have the office kept where it was at that time; also the proper man appointed, and Mr. McCrearie's name withdrawn upon his arrival there at Washington.

Q. Well, what was done about it?—A. I took up the petition, circulated it, and had it signed by the patrons of the office and mailed it to Marshal Irwin at Washington, D. C. I think that is about all, up to the time that these telegrams took place.

Q. What sort of an arrangement did Judge Irwin think ought to be made in consideration of his procuring these things for you and the patrons of the office?—A. That they should, in turn for that, favor Mr. Sulzer at the primary election.

Q. And at the fall election too?—

He was trying to sell out the fall election, too, in this testimony: but he didn't train him well enough. So he says:

At that time the general election wasn't spoken of.

Q. Was it later?—

But that naturally would come later in the turn.

This is a kind of deal with him; had a turn in it. [Reading:]

Q. Did you receive any telegram from Judge Irwin about the matter?—A. I did.

Q. I show you a telegram here, dated April 22, 1918, signed by L. T. Irwin, and ask you if you received that from Marshal L. T. Irwin?—A. Yes, sir.

Q. He was at that time in Cordova?—A. Yes, sir.

Q. It was just after he had passed through your place going out to the coast?—A. Yes, sir.

Q. And that relates to matters and things that you have been talking about?—A. Yes, sir.

Q. To his agreeing to maintaining the post office and procuring your postmaster to be appointed at Copper Center?—A. Yes, sir.

Mr. WICKERSHAM. I offer that in evidence.

Mr. LEEHEY. I object to it as being incompetent, immaterial, and irrelevant, and no connection being shown with Mr. Sulzer or anybody authorized in his behalf.

(Paper marked "Contestant's Exhibit B" and attached hereto.)

Q. Did you receive any telegram from Marshal Irwin later than that?—A. I did.

Q. I show you a telegram dated Washington, D. C., May 14, 1918, signed "L. T. Irwin," and ask you if you received that telegram?—A. I did.

Q. I withdraw that for a moment, and offer the witness a telegram dated May 2, 1918, addressed to Charles A. Sulzer, House of Representatives, Washington, D. C., and signed by R. Blix, postmaster, and I wish you would state if you sent that telegram to Mr. Sulzer at the date it bears?—A. Yes, sir.

Q. That was after the primary election had been held?—A. Yes, sir.

Q. What was the date of the primary election?—A. I can't quite recollect; April 30, I think.

Q. Two days before this telegram was sent?—A. About two or three days; shortly before, anyway.

Mr. WICKERSHAM. I offer this telegram in evidence.

Now, the telegrams were all put in evidence; then this cross-examination took place, which relates only to the identification of the telegrams.

Then, again [reading]:

Q. Do you know what Mr. Sulzer did with respect to these matters that you were telegraphing about in the way of getting the post office retained for you, and your postmaster appointed, in Washington?—A. Yes, sir.

Q. What was done?—A. Judge Irwin and Mr. Sulzer went up to the Second Assistant Postmaster General—

By Mr. LEEHEY:

Q. Are you testifying from your personal knowledge or hearsay?—A. From our conversation with Judge Irwin.

Q. From what Judge Irwin told you?—A. Yes, sir.

By Mr. WICKERSHAM:

Q. Who is Judge Irwin?—A. United States marshal of the fourth division.

Q. At Fairbanks, Alaska?—A. Yes.

Q. He is a Democrat, is he?—A. Yes, sir; to my knowledge.

Q. And Mr. Sulzer was a Democrat?—A. Yes, sir.

Q. And Judge Irwin was one of Mr. Sulzer's particular friends and boosters?—A. Yes, sir.

Q. And was working for Mr. Sulzer in those matters?—A. Yes, sir; from the interest he took on his way out over the trail on his way to Washington it seems that he was.

Now, I can not find anything more, except he goes on to testify as to the result of the vote; and the only thing that connects the fall election with this—now, wait a minute; he comes in again, a question by Mr. Leehey on cross-examination. [Reading:]

Q. They thought his action in keeping the post office where practically everybody in the community wanted it was a very proper action to be taken by the Delegate from the Territory, did they not?—A. It was at that time.

Q. And they approved his course in doing it?—A. Yes.

Q. Didn't you say in your direct examination that the talk you had with Judge Irwin and this very arrangement related only to the primaries?—A. At that time.

Q. Was there anything said about the fall election in your talk with Marshal Irwin?—A. In his wire from Washington it states, if you have read that.

Q. I am not referring to the wire, I am referring to the talk you had with him. The wire will speak for itself. Was the fall election ever mentioned in any of the conversations you had with Judge Irwin?—A. Yes, sir; it was.

Q. How and when.—A. Well, at the time when he left there.

Q. That was before the primary election, wasn't it?—A. Yes.

Mr. WICKERSHAM. Read that again.

Mr. GRIGSBY. Page 695 [reading]:

Q. That was before the primary election, was it?—A. Yes.

Q. What was said about the fall election?—A. He said he hoped we would stick to him and give him a pretty good showing. It was a foregone conclusion that he would get those votes then.

Q. It was a foregone conclusion that he would get them at the primary or general election.—A. At the primary.

Q. That was the subject that was under discussion at that time, was the primaries?—A. Yes.

Q. And his contest that the primaries was with Mr. Maloney? That was what was then discussed?—A. Yes; but the general was also mentioned.

Q. But the general was also mentioned. What do you mean by "general"?—A. General election was also mentioned.

Q. Who mentioned it?—A. Judge Irwin and myself, when he left there.

Q. Didn't you just say in direct examination that the talk was then all about the primaries?—A. Not all together, but most naturally the primary came so many months ahead of the general election, and it would be natural it would have something to do when the general election came around.

Of course the witness extends this as strong as he can to the general election. But it is not anything reprehensible so far as I can see about anything that was done. If it is, my moral sense is so sadly blunted that I am not shocked, as I state in my brief. Tom Donohue denies that he had anything to do with anything that was not perfectly proper. I do not remember exactly what he said about it, but here is the situation: Here is Sulzer down in Congress, and Erwin comes along, and here is one fellow trying to get the post office moved out into the country and everybody else wants it in the town, and the marshal is on his way to Washington and they go to him, a man of his prominence, and they ask him to fix it up that this thing could not be perpetrated upon them.

As he is a good politician, he gets them to make a good showing for Sulzer in the primary, and then he does down there, and the telegrams show that after it was done he wired back and said: "You ought to do as well in the general election. Now, Sulzer has done so much for you fellows, show your appreciation." It does not shock me, and you gentlemen do not look very badly shocked, so I guess I will drop that particular subject.

Now, I have only three more of these subjects to discuss, the Forty-mile, the Indian reservation proposition, and the soldiers, and then I have my own offset, so I suppose I had better go ahead and get rid of some more of it.

The CHAIRMAN. I think you can get rid of some of it if you like.

Mr. GRIGSBY. The Fortymile precinct. There is a proposition that I would not blame the judge for raising in the contest if he did not raise it in the way he does. But it seems as if the judge must start back and accuse somebody of a crime as the basis for every contention. Now, Judge Bunnell is the goat in this transaction, and he goes back into the history of Judge Bunnell's connection with other alleged election frauds of 1916 just because of the fact that in the other contest Sulzer wired to Judge Bunnell and asked him to get him a lawyer. Further than that Judge Bunnell had nothing to do with the election. There is something in the testimony in the other record that one of the soldiers did see a telegram signed by Bunnell

on a bulletin board saying that soldiers had a right to vote, but there is the testimony of lots of other soldiers taken, and nobody else ever claimed that that was anything else but a mistake.

Mr. HUDSPETH. Who is Bunnell?

Mr. GRIGSBY. Judge Bunnell, of the fourth division.

Mr. HUDSPETH. He is a Federal judge?

Mr. GRIGSBY. A Federal judge; and Judge Bunnell's clerk in the fall of 1918 wrote a letter to the commissioners in the fourth division. The letter is in evidence; put in evidence by Judge Bunnell in this testimony. It seems that the miscellaneous fund up there, out of which election expenses are paid, had become depleted, and they could not pay up in full for the annual election expenses of 1916. The population is leaving Alaska very rapidly, and there are lots of precincts up there where very few ballots are cast, as I will show you in the record.

Mr. O'CONNOR. You say the population of Alaska is dwindling?

Mr. GRIGSBY. It was at this time, and has dwindled steadily ever since the war commenced. The last census will show whether it has gone back or not. The vote of 1916 was over 14,000 and in 1918 it was only about 9,200. A large part of the population left. I was up there in the fall of 1918, on this Fairbanks Trail. The people were rapidly coming out, and every roadhouse was full every night.

These are some of the precinct votes in the Fourth division: Coldfoot, total 14; Circle, 16; Deadwood, 13; Discovery, 24; Dome, 29; Ester, 29; Eureka, 19; Fairbanks Creek, 23; Fort Yukon, 18; Franklin, 9; Greenstone, 7; Gilmore, 25; and so on, 12, 5, 25, 21 etc. In 1918 there were from 10 to 20 votes cast in most precincts, and in two-thirds of the cases less than 30 votes, in the precinct, and the law says that no commissioner shall establish a precinct where there are less than 30 legal voters, but it says that if a precinct is once legally established it shall continue as such precinct until changed or discontinued by the order of the commissioners, so that if there are 13 or 20 voters in a community, he can not establish it, but if one has been established and there are only five living there he can continue it, in his discretion, or abolish it. The clerk of the court up there wrote a letter to the various commissioners and called attention to the fact of the election expenses, and said that while it was not desired that a large number of voters be disfranchised, to be careful about it. These letters went to every commissioner in all the 70 or 80 precincts in the fourth division, and one commissioner acted on that letter of Judge Bunnell's clerk of the court—it was submitted to Bunnell. He saw it. He says so. He admits it, and out of these precincts probably there were 40 in the fourth division, where there were less than 30 voters, and where the commissioners could have legally discontinued them. One commissioner discontinued two precincts, and included them with three other precincts. Now, that is all the crime that can be attributed to Judge Bunnell in connection with the transaction. That is the evidence. His clerk of the court wrote that letter, not to this particular commissioner, but to all of them. That was testified to as being a fraudulent attempt to suppress a whole lot of legal votes. It was just a very sensible letter. It is in the record, and I think I had better read it to you. It was put in by our side. Here is the letter, page 617. It seems that it is addressed to United States

commissioners, inclosing the election supplies to various precincts [reading]:

DISTRICT COURT OF THE TERRITORY OF ALASKA,
FAIRBANKS, August 26, 1918.

To United States Commissioners:

Supplies are inclosed herein for the voting precincts in your recording precinct. An invoice is also inclosed and you may apportion the supplies herein to the different voting precincts.

Please see that all vouchers for posting notice of election are executed and returned here for payment promptly. Also please be sure and sign the certificate of posting notices, as well as having the same signed by the person who posted the notice.

Commissioners, generally, are to be commended upon the manner in which they have responded to the suggestion of economy in election expenses. There is still one matter, however, which should be brought to the attention of the election officers.

It appears that many election judges are under the impression that a strong and expensive ballot box must be had. Such is not the case, and some dissatisfaction has been the result of disallowing exorbitant charges for ballot boxes. In places where a good ballot box has been made, it should be used for all subsequent elections, but if it is found necessary to incur such expense, then only a nominal charge will be allowed.

The same general request for economy is made herein as was made in the election two years ago. You are earnestly requested to bring these matters directly to the attention of election officers and if this is done, complaints and dissatisfaction regarding the allowance of expenses will be eliminated.

The attention of one or two commissioners is directed to section 396 of the Compiled Laws of Alaska. The law does not contemplate the establishing of voting precincts in places where many prior elections have proven that there are but five or six votes.

That is establishing them. Nothing is said about discontinuing them [reading]:

While it is not believed that any considerable number of voters should be deprived of their franchise by reason of having no voting precinct established, yet it is a matter which should receive the careful attention of the commissioner creating the same.

Respectfully,

J. E. CLARK, *Clerk*.

Now, Bunnell says that that letter was submitted to him and that he approved of it. It was sent out with the supplies. Now, he says the reason for it was [reading]:

Q. Did the clerk of your court, the clerk of the district court for the fourth division, in sending out election supplies to the various commissioners throughout your division for the election of the year 1918 accompany them with a letter which met with your approval?—A. Yes; the clerk of the court, prior to sending out the election supplies, prepared a letter which he submitted to me and which met with my approval. It came about in this way: When I went to Fairbanks in 1915, fund C of the court was \$4,500, or thereabouts, in debt. Of that amount nearly a third was for election expenses for 1914; in fact the clerk had all of these vouchers for election expenses as sent in by the judges of the election, but very few had been paid. We had to secure authority from the attorney general to pay those expenses outside of our regular method, or at any rate to arrange so that it could be paid.

The clerk wrote this letter cautioning the commissioners not to contemplate establishing voting precincts in places where prior elections had proven that there were but five or six votes. Before there were 40 or 50 precincts where there were less than 30 votes, and the commissioner had the legal right to discontinue any of these, but only one commissioner attempted to abolish two precincts in all that fourth division on account of this letter written by Judge Bunnell's

clerk, and there is no justification for any reflection upon Bunnell by the contestant on that account.

Bunnell was not responsible for it and there could be no particular complaint made against the commissioner for doing it. It is true that it would have compelled, according to the evidence, the voters at Jack Wade and Steele Creek to walk or travel a distance of 14 miles and return, and in some cases 16 miles and return. According to the testimony of the witnesses they would have to go about 32 miles round trip, and some of them 28. Now, just imagine the situation. Here is a Territory with 10,000 votes. There are 9,200 votes, but we will call it 10,000 and then increase the mileage and call it 600,000 square miles. There is in Alaska a voter for every 60 square miles. Half of these are centered and concentrated within 200 or 300 square miles, so in these outlying districts you have got a voter for every 100 square miles, and there are lots of them that will not get to vote at all unless they travel for 50 or 60 miles if you can not establish a precinct for them with less than 30 voters in it, but having established it you can continue it as long as you want to if the Government is willing to pay for it, even if it has dwindled to five or six votes.

Mr. O'CONNOR. You can discontinue it?

Mr. GRIGSBY. You can discontinue it, because the law says that no precinct shall be established in which there are residing less than 30 qualified voters, but once established the same shall continue until discontinued or abolished by order of the commissioner. So he certainly has that right to abolish it. Now, this fellow went out there in a precinct where there were less than 30 votes cast—considerably less in 1916; the record shows how many votes were cast—and he abolished Steele Creek and Jack Wade. Now, let us see how many votes were cast in Steele Creek and Jack Wade.

The CHAIRMAN. You are referring to 1916?

Mr. GRIGSBY. Yes. At Jack Wade there were cast in 1916 21 votes, of which Connolly got 9, Sulzer 4, and Wickersham 8. Now, the socialists have not complained. At Steele Creek in 1916 there were cast 10 votes—Sulzer got 1, Wickersham 7, and the socialists 2.

Mr. HUDSPETH. That is in 1916?

Mr. GRIGSBY. Yes. Wickersham carried these two precincts over Sulzer in 1916 by 10 votes, and there were 21 votes cast in one and 10 in the other, and the commissioner had the legal right to abolish both of them, which he did. He abolished these precincts, or attempted to. That is the question in this case, whether he abolished them or not. If he legally abolished them there is no question in this case, because he has the right to do it, even if he did disfranchise voters.

Mr. HUDSPETH. I am asking this in order to set myself right. I do not recall that Judge Wickersham made any contest as to abolishing any precinct in the Territory.

Mr. GRIGSBY. Oh, yes; he discusses this Fortymile proposition. Fortymile is where the recording district was reorganized, and two precincts were abolished and incorporated in three other precincts by an order which was made less than 60 days before the election.

Now, the law requires that at least 60 days before the date of the election the commissioner shall issue an order and notice signed by

him and entered in his records in a book to be kept by him for that purpose, in which said order and notice he divides the election district into voting precincts and describes them and specifies a polling place in each of said precincts, and gives to each voting precinct an appropriate name by which the same shall thereafter be designated, provided that no such voting precinct shall be established with less than 30 qualified voters resident therein; that the precincts established as aforesaid shall remain as permanent precincts at all subsequent elections unless they are discontinued by order of the commissioner of that district.

Now, it does not say when the order is to be made.

Mr. HUDSPETH. Let me ask you, Mr. Grigsby, in this Fortymile district did he abolish some precincts?

Mr. GRIGSBY. Up until 1916, or until the 1916 election, there were five voting precincts in the Fortymile recording district.

Mr. HUDSPETH. That is all right, then how many were there in 1918?

Mr. GRIGSBY. Three.

Mr. HUDSPETH. Then there were two abolished?

Mr. GRIGSBY. Two abolished and the law requires that at least 60 days before each subsequent election, after 1906, the commissioner shall divide his election districts into precincts. Now, that does not mean he has to do it every year. At the first election for Delegate to Congress he only had to do it 30 days before election, because they did not have so much time. And then it says in all subsequent elections the commissioner must divide the recording district into precincts 60 days before election, that means where there is an occasion to make any division. Where it is already divided, the section says it may remain and the man does not have to make an order every two years redividing his division into precincts. He does have to post a notice of election, as I understand it. The more I read this the more things occur to me.

Mr. O'CONNOR. As I understand, Mr. Wickersham does not contest the right of the commissioner to abolish these precincts, but says that it must be done 60 days prior to the election. Is that correct?

Mr. WICKERSHAM. It must have been done 60 days prior to the election, and in such a way as to give the people an opportunity to vote.

Mr. GRIGSBY. That leaves lots of room for argument.

Mr. ELLIOTT. You claim that it was not done in accordance with the law?

Mr. WICKERSHAM. Not in accordance with law.

Mr. GRIGSBY. I do not know what he means when he says it must be done so as to give an opportunity to vote. Some of these recording districts contain over a thousand square miles.

Mr. O'CONNOR. Were these precincts abolished within 60 days.

Mr. WICKERSHAM. The thirty-fifth day before election.

Mr. GRIGSBY. The thirty-fifth day before election.

Mr. O'CONNOR. So that the commissioner had the right to do that?

Mr. GRIGSBY. I have not got to that yet [reading]:

And all such voting precincts shall remain as permanent precincts for subsequent elections unless discontinued or changed by order of the commissioner.

Mr. CHINDBLOM. However, while he divides up the election district into precincts within 60 days, or 60 days before election, he is

not compelled to give notice or publicity for a longer period than 30 days?

MR. GRIGSBY. Yes; that is in the next section. Now, the date of the copy of his order is in evidence, and shows that it was dated on the thirty-fifth day before election. Now, as far as the publishing of it is concerned, he gave the statutory notices, and there is no complaint on the part of the voters that it did get to the voters. Now, the order is defective in a trifling particular. In establishing the polling places they are indefinitely established. It says, "Moose Creek"—gives the name—and it does not say it shall be at the corner of One hundred and sixty-seventh Street and Broadway, or anything like that, but when he said Moose Creek the chances are everybody knew what he meant up there. But the order is irregular and defective in these particulars technically: it was not made 60 days before election, and it compelled 15 or 18 voters, if they wanted to vote, to walk or ride a distance of 14 to 16 miles and return, and some of them did it. And some of them got mad and would not do it. And they expressed their wrath. Most of them testified that they would have voted for Wickersham if they had been able to vote, and there is no evidence to the contrary.

There are a great many hundreds of voters in Alaska that have to go that distance to vote, and many other hundreds of voters that are deprived of their vote because they have to go a great deal farther, and not one of these voters complained because of the date of the order. In fact, they are on record as having protested this redivision several weeks before election. These very fellows that afterwards come in and swear that they were deprived of their vote because they had to walk too far protested against this redivision many days prior to the election.

MR. CHINDBLOM. Without redress of grievances?

MR. GRIGSBY. Without redress of grievances. In fact, it is way up in the backwoods, and they did not get a letter down to Fairbanks until long after election, and nothing could be done.

Judge Bunnell is not to blame for that. Judge Bunnell is not to blame for what the commissioner did. His clerk sent out a general letter in which he cautioned commissioners not to establish precincts in which there were not more than 5 or 6 votes, and one of his commissioners say that there was a chance to make a record for economy, as many Alaskan officials do, and he abolished one precinct of 10 votes and one of 21.

MR. CHINDBLOM. In Alaska they try to establish economy?

MR. GRIGSBY. Some people do. They think they can make a hit with the department by cutting down expenses. I never followed that course when I was in office, but spent all the Government money I legitimately could, and I never got criticized for it. It all depends on who is at the head of the department at any particular time—of the Post Office Department or any other department of the Government. But I know that in Judge Wickersham's time there was a watchful eye kept upon the exchequer. Once in a while a fellow gets in who wants to make a record for economy, and here was a case where the election expenses had mounted up, and they had notice that the fund was running shy, and they had trouble with the department about it.

Bunnell is not a crank, but a reasonable man, and he approved the letter which his clerk sent out cautioning election officials not to waste the money of the United States for unnecessary expenses, and he said that election precincts should not be established where there were less than 5 or 6 votes, and certainly you would not establish one where there are only 1 or 2 votes. Judge Bunnell is not guilty of any crime.

Mr. CHINDBLOM. They have three judges and two clerks?

Mr. GRIGSBY. Just in the towns; on the outside they have three judges, two of whom act as clerks.

Mr. ELLIOTT. What do you pay election officers up there?

Mr. GRIGSBY. I do not know, \$4 or \$5 a day, I think. In the cities I think it is \$5 a day. I think there is a limit put on it in this act. They establish a schedule of fees here for each of the judges of election who shall qualify and serve, and any person on election day and each of the clerks of election in an incorporated town is entitled to compensation of \$5 for all services performed, that is one day of 24 hours, if it takes them that long to count.

Mr. O'CONNOR. I fail to catch the point that you are making in regard to some fellows that kick about something, about some re-organization plan of the commissioner.

Mr. GRIGSBY. I say that this fellow out there that was instructed to be careful about his expenses might say, "I had better look around and see where I can cut down expenses."

Mr. HUDSPETH. The question was, you referred to somebody making a protest about this redivision.

Mr. GRIGSBY. Oh, yes; the voters up there when they got the notice that their voting precinct had been discontinued, sent a protest to the judge of the court and protested about redistricting of the recording district on the ground that it compelled them to go too far to vote. The judge did not get that until after election. That is in evidence. So they sat down and did not vote, all but two of them. Two of them actually did walk over and vote and the rest of them could have done so. It is not what we would call a hardship in Alaska to make 14 to 16 miles a day and go back the same day, as far as that is concerned.

Mr. WICKERSHAM. It was the same day they moved out of Cache Creek?

Mr. GRIGSBY. It was the same day they moved out of Cache Creek, and they probably could not walk over and back in one day, and it was not convenient to stay over night. But there are hundreds of voters in Alaska to-day that go without their votes.

But regardless of that, regardless even if this commissioner in his own mind had the idea that you got 10 votes plurality down there in 1916, and he might keep some of them from coming up to vote, if he had a legal right to do that it would not result in throwing out these votes. They were not deprived of an opportunity to vote, such as other people living in the same localities had, and had to submit to the same inconvenience. Some men had to travel two or three days to vote up in your division. It depends on how badly you want to vote. All you have to do is to look in the record and count the precincts and the votes. The judge of the court was not to blame for it. There was nothing crooked about it. No fraud about it. The only

thing to consider is whether there was anything different in the situation when this fellow makes an order and divides his district into precincts, establishes polling places, and appoints judges of election, etc., and then locks it up where nobody can see it for 30 days and then publishes it, or whether he enters it on the thirty-fifth day before and then publishes it. It did not affect anybody whether he did it one way or the other. It is a very peculiar statute [reading]:

He shall issue an order 60 days before election. Such order and notice shall be given publicity by posting copies of the same at least 20 days before the date of the first election and 30 days before the date of subsequent elections.

Mr. O'CONNOR. Twenty-five days, was it?

Mr. GRIGSBY. Thirty-five days. The only thing that concerns us now is whether they got the notice. They did, because they gave notice——

Mr. O'CONNER. What do you think that "issue" means in that connection?

Mr. GRIGSBY. Well, he issues an order. The United States commissioner of Fortymile, in a cabin with nobody around, sits there and issues an order. It means he makes it, enters it.

Mr. CHINDROM. The statute says he shall enter it in his book—"Issue an order and enter it in his record."

Mr. GRIGSBY. "In a book kept for that purpose." He might lock it up in his safe.

Mr. O'CONNOR (reading): "Shall give publicity by posting copies not less than 20 days."

Mr. GRIGSBY. Twenty days in the case of the first election and thirty days in the case of the second election. That is the point. By that order he made it inconvenient, we will say, for these people to vote who lived in those two precincts. They were discontinued.

The CHAIRMAN. How large are these two precincts? What is their size?

Mr. GRIGSBY. Well, I would say—I can not tell from the description—I do not know the distances, but I suppose those recording contain 700 or 800 square miles or more, and you divide it into five and then into three voting precincts, and they might be 8 miles one way and 5 miles the other, or twice as much. They are large, and the people do not all live in one place. If the commissioner did not establish Forty-Mile for the convenience of most of the voters, then he was negligent. Forty-Mile and Jack Wade are towns very close together, and these are in the one end of the division; 14 or 15 miles off is Moose Creek, Chicken, and Franklin. They are quite a distance apart.

Mr. CHINDBLOM. Let me ask you this: These recording districts that are mentioned here in the election law are not the same recording districts authorized to be established by miners when they make a discovery?

Mr. GRIGSBY. No, sir. They have miners' laws and regulations where the Government has not reached which are binding and have the force and effect of law when they are consented to; when a strike is made and there is sufficient population attracted to create the necessity for a recording district, a new stampede, then a new commissioner is appointed and the boundary is defined by the district

judge, and then the recording district is made, a district 100 miles square, or approximately, and that is divided into election precincts, and he has to describe them by these natural boundaries; there is no survey. He has to pick out well-known natural objects.

Mr. O'CONNOR. Are there sections of Alaska that are not included in any recording district?

Mr. GRIGSBY. I think there are. In the northern parts of the Territory there must be. I could not say for sure as to that. But there is an uninhabited tract in Alaska, a part of Alaska, with very few people in it. At present from the northernmost point we never succeeded in getting any returns.

Mr. O'CONNOR. That is what I asked; are there any precincts from which you do not get returns?

Mr. GRIGSBY. I recall that instance now, but we did not know whether an election was held or not. We never did get any returns. I could not say offhand, but above the Yukon River, after you get off the tributaries of the Yukon, we never hear from that country. I suppose a good deal of it is not included in any precinct.

Mr. WICKERSHAM. There is a great deal of country that is not included in any precinct at all.

Mr. HUDSPETH. How far is it from where this United States commissioner lived to the precinct that he abolished?

Mr. GRIGSBY. This man lives at Franklin and the records do not show—14 or 16 miles to Moose, and I guess about the same distance to Franklin, as some of the witnesses testified.

Mr. HUDSPETH. Let me ask you again, what means of communication, if you know, did he have to notify these people in promulgating his order or publishing it up there, whatever the term is?

Mr. GRIGSBY. By notices——

Mr. CHINDBLOM. The law provides that.

Mr. HUDSPETH. In public places.

Mr. CHINDBLOM. And also published in the newspapers.

Mr. GRIGSBY. There is no newspaper there.

Mr. HUDSPETH. Did he post that 30 days before the election?

Mr. WICKERSHAM. If so, there would be proof in the return.

Mr. GRIGSBY. Not necessarily. The order is a part of the election return and is not required to accompany them. He did it: there is no complaint that he did not. [Reading:]

Which must be posted in three conspicuous places in each voting precinct.

And these people, although they were considerable distances away, knew it, because they protested many days before election.

Mr. CHINDBLOM. It says three conspicuous public places. It might be a large oak or a big rock.

Mr. HUDSPETH. Or a signpost, or a cabin door, I guess.

Mr. GRIGSBY. They get notice of it anyway. I do not know how it was. No complaint was made that it was not posted in a conspicuous place.

Mr. CHINDBLOM. One must be posted at his office and three copies in three conspicuous public places, and one of these places shall be the polling place, and then he shall mail a certified copy of the notice to the governor of Alaska. And there is also publications to be made in newspapers.

Mr. GRIGSBY. I see that you are just about ready to go, and I think I have very little to say on this and I do not want to start another subject.

(Thereupon, at 5.50 o'clock p. m., the committee adjourned until to-morrow, Saturday, April 3, at 10 o'clock a. m.)

COMMITTEE ON ELECTIONS No. 3,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 5, 1920.

The committee assembled at 10.30 o'clock a. m. A quorum was present. Hon. Cassius C. Dowell (chairman) presiding.

The CHAIRMAN. Mr. Grigsby, you may proceed with your argument.

STATEMENT OF HON. GEORGE B. GRIGSBY, CONTESTEE—
Resumed.

Mr. GRIGSBY. Mr. Chairman and gentlemen, I will next take up the question of the soldier vote. Mr. Wickersham made the statement to this committee in response to a question that upward of 70 soldiers voted illegally in Alaska at the last general election for Mr. Sulzer.

I have segregated his list of soldiers, which consists of 49 soldiers in the Regular Army and 29 or 31, I forget which, draft soldiers, who were concentrated at a camp in Fort Liscom, in the Valdez Bay precinct in Alaska.

There were 16 soldiers who gave depositions in this case, and who testified for whom they voted. Eleven of those soldiers testified that they voted for Mr. Sulzer; five testified that they voted for Mr. Wickersham. In Mr. Wickersham's brief he omits to charge himself with Clement C. Stroupe and James W. McConnell.

The record shows that Clement C. Stroupe voted at Nulato, and that at Nulato there were 10 votes cast for Sulzer and 4 votes cast for Wickersham, and none for the Socialist candidate. Mr. Stroupe was asked: "Did you vote for Mr. Sulzer for Delegate to Congress from Alaska?" And he answered, "No." The record shows that he voted, and consequently he must have voted for Mr. Wickersham. Mr. Wickersham conceded that he so voted the other day in his argument.

Donald H. Tyer testified that he voted for Mr. Wickersham, as did Whitman and Labrisky, and James W. McConnell, whom Mr. Wickersham does not mention in his brief, also voted for Mr. Wickersham. James W. McConnell testified that he voted in that election and testified that he did not vote for Mr. Sulzer; and no one else besides Mr. Wickersham got any votes at Nulato, where McConnell voted. You will find his testimony, I think, on page 320 of the record:

Q. Did you vote for Charles A. Sulzer for Delegate to Congress from Alaska?—A. No.

The same answer is made by Clement C. Stroupe—

Mr. WICKERSHAM (interposing). Look at Mr. McConnell's answer to the preceding question. He said he voted at Barnesville, Ohio; he was not in Alaska at all at that time; he did not vote in Alaska.

Mr. GRIGSBY. Yes; I see; he voted in Barnesville, Ohio; I omitted to notice that. So I can not charge that vote to Mr. Wickersham.

Mr. CHINDBLOM. Whose vote is that you are speaking of?

Mr. GRIGSBY. James W. McConnell's.

Mr. ELLIOTT. Well, you had two votes there that you said Wickersham got.

Mr. GRIGSBY. I noticed that one in a hurry and I got it wrong. As to the other one, Clement C. Stroupe testified that he voted at the election of November 5, 1918, for Delegate to Congress at Nulato, and that he did not vote for Mr. Sulzer; therefore he must have voted for Mr. Wickersham. That is on page 321 of the record. So that there were four soldiers that voted for Mr. Wickersham, and the testimony is that those four had no other residence in Alaska, as far as the record shows, except as soldiers in the Army.

Mr. CHINDBLOM. Why did this man testify if he did not vote in Alaska at all?

Mr. GRIGSBY. Where did he testify?

Mr. CHINDBLOM. No; why did he testify? Did he testify to some other facts?

Mr. GRIGSBY. No. He was supposed to have voted in Alaska, evidently, and it turned out that he did not vote there, according to his own testimony.

Mr. O'CONNOR. Was the examination continued after he said he had voted in Ohio?

Mr. GRIGSBY. It was an examination on written interrogatories, and that is the reason he went on and answered the rest of the question.

Now, of the 11 who testified that they voted for Sulzer are the following legal voters, under the law, as I shall show it to you gentlemen when I get through with this list: William T. Barr, James W. Boon, M. H. Faust, and P. F. McQuillan.

William T. Barr testified (record, p. 255) that he voted in Fort Gibbon, Alaska; that he enlisted in the Army in January, 1917, at Fort Gibbon; and that he had resided in Alaska more than three years prior to November 5, 1918; that he enlisted two years before election day, 1918, and lived in Alaska three years before the election; and that he was a resident of Alaska when he enlisted; that he had resided in that voting precinct over a year before election day. That is all the evidence there is on that subject.

James W. Boon testified——

Mr. CHINDBLOM (interposing). May I ask just a question there? Did he vote in the precinct where he lives?

Mr. GRIGSBY. Yes, sir.

Mr. CHINDBLOM. This first man, I mean.

Mr. GRIGSBY. Yes, sir; there is no testimony that these soldiers did not vote in the precinct where they were residing.

James W. Boon testified that he reenlisted in November, 1916; that he was a resident of Alaska when he reenlisted; that he had resided in Alaska for a period of five years prior to the election of November 5, 1918. That is all the evidence there is in the record with reference to his residence, his own testimony that he was a resident prior to his reenlistment, and had been a resident of Alaska for five years before election.

M. H. Faust has been a resident of Alaska for 15 or 16 years, according to his own testimony. He has reenlisted in Alaska several times. He testifies that he has had no other residence during that time; he has kept his family in Alaska; Alaska was his home. He was a noncommissioned officer for a long time, and finally he was commissioned as an officer in the Signal Corps, and was in Alaska and residing there when appointed. The authorities which I will read later will cover his case.

P. F. McQuillan testified that he was out of the service and a resident of Alaska for nine months before reenlistment.

Those four votes which I have just named are legal under all the authorities. That leaves seven out of the eleven who voted for Mr. Sulzer who were in Alaska only as soldiers.

Mr. CHINDBLOM. Let me ask you this: Is there a contention here that a residence of one year is required in Alaska?

Mr. GRIGSBY. Yes, sir.

Mr. CHINDBLOM. You say that this last one lived in Alaska for nine months?

Mr. GRIGSBY. He has been in Alaska a good deal longer time than nine months, but he was out of the service for nine months before his reenlistment, and the authorities do not require a man who reenlists in a State or Territory to have been in the State or Territory more than one day before enlisting in order to acquire a residence while in the service.

Mr. CHINDBLOM. Well, did he come to Alaska as a soldier originally?

Mr. GRIGSBY. I will have to read his testimony in order to find out with certainty; it is on page 251 of the record. I think he was examined on written interrogatories and there was no cross-examination. His testimony is as follows:

Direct examination by Mr. MARSHALL:

Q. Your name is P. F. McQuillan?—A. Phillip F. McQuillan.

Q. Mr. McQuillan, you are in the service of the United States Army, in the Signal Corps?—A. Yes.

Q. How long have you been in such service?—A. Altogether, about 22 years.

Q. How long have you been continuously in the service?

Mr. WICKERSHAM. Wait a minute. Do not skip that last question.

Mr. GRIGSBY (reading):

Q. Where did you enlist in the service?—A. In Rochester, N. Y.

Q. How long have you been continuously in the service?—A. Since 1906.

Q. If you have ever resided in Alaska at any time when you were not in the military service, please state when and for how long a period.—A. I was out of the service and a resident of Alaska while out of the service for the period of about nine months.

Q. You then reenlisted in the service and have been in the service ever since?—A. Yes.

Q. For whom did you vote, and where, for the office of Delegate to Congress from Alaska on November 5, 1918?—A. I voted for Charles A. Sulzer, at Sitka, Alaska.

The committee will notice that there is no objection made by any attorney as to his testifying, and no instruction given. That is from the record, page 251. It does not show how long he had been in Alaska immediately prior to the election, but his vote is presumed to be legal, to start with; and he had been in Alaska nine months prior to his reenlistment.

Mr. HAYS. He says he was a resident of Alaska nine months before his last enlistment. Now, how long a time has expired between the time of that enlistment and the casting of the vote?

Mr. GRIGSBY. The testimony does not show. These are formal questions, propounded in writing, and he answered the questions. But the evidence tends to show that he was a resident of Alaska before his reenlistment.

Mr. CHINDBLOM. He does answer this question: "How long have you been continuously in the service?" He answers that by saying, "Since 1906."

Mr. GRIGSBY. Yes, sir; and then he contradicts that in the next answer by saying that he was out of the service and a resident of Alaska for nine months.

Mr. CHINDBLOM. That would be an exception to the continuance of his service in the Army?

Mr. GRIGSBY. Yes; it must have been.

Mr. HAYS. My question was intended to find out whether the nine months which he claimed as residence in Alaska previous to his last enlistment, added to the period of that enlistment, would make a year.

Mr. GRIGSBY. Well, it does not affirmatively show that; but on all the evidence you can judge that he was a resident for a longer period than that.

Now, if I am right about these 4 soldiers, out of the 11 that Judge Wickersham claims voted for Mr. Sulzer, that leaves only 7 who are not shown to have been legal voters, only so far as their own testimony is concerned; but there is other testimony showing the fact that most of them married in Alaska, and rented homes, or purchased homes, which would make them residents. I will come to that later, in discussing the 7, in connection with the testimony of Noakes and others.

Now, there is another vote charged to Sulzer, that of H. R. Morgan. Mr. Morgan did not give a deposition, but made an affidavit in Seattle, the making of which affidavit was made a condition of his discharge; he was refused a discharge until he would make the affidavit; and he made an affidavit that he voted for Mr. Sulzer; and this affidavit was offered in evidence in rebuttal in this case. We had no opportunity to cross-examine, because he did not testify, and his evidence is given in rebuttal and should not be considered by this committee; it is not proper rebuttal; it is part of the contestant's case in chief.

Mr. CHINDBLOM. Well, was it a deposition taken on notice?

Mr. GRIGSBY. No, it was not; it was simply an affidavit offered in evidence by Mr. Wickersham, or some other witness of his when he gave his evidence. The affidavit was simply offered as an exhibit. Mr. Morgan was not on the stand.

Mr. ELLIOTT. That is the only way the affidavit was introduced, is it?

Mr. GRIGSBY. Yes, sir.

Mr. CHINDBLOM. Is there other evidence in the record in the way of affidavits submitted as exhibits?

Mr. GRIGSBY. There is other evidence in the form of affidavits.

Mr. CHINDBLOM. Are there any offered by yourself?

Mr. GRIGSBY. One. I will discuss that later, when I discuss my counterclaim. It was offered by my attorney. There is another soldier vote claimed to have been cast for Sulzer, Herman Du Marce. The record shows that a man of that name voted at Copper Center, for Mr. Sulzer; every vote there was for Sulzer. I have found one authority in the Digest of Contested Election Cases; I do not remember where it is now; I will call it to your attention later—to the effect that there must be something to supplement the poll books in support of identity; that identity of name alone does not create a presumption of identity of person. And if you follow that rule, you can not count this vote; if you find that the identity is sufficiently proved, that should be charged to Mr. Sulzer.

The CHAIRMAN. Let us see if I understand you correctly: Your proposition is that the mere fact of a name appearing on the polls as having been voted under does not identify the voter?

Mr. GRIGSBY. Yes.

The CHAIRMAN. It requires affirmative evidence of the identification of the voter?

Mr. GRIGSBY. That is correct.

The CHAIRMAN. All right; I do not want you to go into that more fully now.

Mr. O'CONNOR. Suppose there was only one person by the name of Smith, for example, on the poll book.

Mr. GRIGSBY. Here is a case that will illustrate: Here is a man that was down at Valdez, or Juneau, and the evidence in the case is that Herman DuMarce voted at Copper Center. Now, I do not know of any other evidence—and if I am wrong Mr. Wickersham will correct me—with regard to this vote at Copper Center; I do not recall any other evidence. And Herman DuMarce was in the Signal Corps.

The CHAIRMAN. Is there a man in the Signal Corps by the name of Herman DuMarce?

Mr. GRIGSBY. Yes; and Herman DuMarce voted.

The CHAIRMAN. And Herman DuMarce voted. Now, the question is, from your standpoint, is he properly identified by the evidence?

Mr. GRIGSBY. Yes, sir; that is the exact point.

Mr. CHINDBLOM. Well, what does the record show with reference to DuMarce voting? Did he vote in that precinct?

Mr. GRIGSBY. The poll book of Copper Center shows that Herman DuMarce voted at Copper Center.

Mr. CHINDBLOM. Well, he testified that he lived at Juneau, did he?

Mr. GRIGSBY. No, sir; I said he might have lived at Juneau.

Mr. CHINDBLOM. Well, who testified that Du Marce was a soldier?

Mr. GRIGSBY. There is a sworn list containing his name, sworn to by Col. Lenoir; so that it is in evidence that he was a soldier in the Signal Corps.

Mr. CHINDBLOM. In other words, all that there is in evidence on the point is that a man by the name of Du Marce was in the Signal Corps, and also that a man by the name of Du Marce voted?

Mr. GRIGSBY. That is all that I know.

Mr. CHINDBLOM. The two names being identical?

Mr. GRIGSBY. That is the point.

Mr. ELLIOTT. Is there any evidence here that this Du Marce was stationed in that precinct where he voted?

Mr. GRIGSBY. That is what I was trying to find.

Mr. WICKERSHAM. You will find the list on page 343 of the record.

Mr. GRIGSBY. I am looking for the list showing where he was stationed, on page 56; that is the only list showing where he was stationed.

Mr. WICKERSHAM. On page 343 is the roster of the Signal Corps.

Mr. GRIGSBY. Well, that gives where they were stationed on December 31, 1916. This list that you refer to, Mr. Wickersham, is the "Roster of Depot Company F, Signal Corps, December 31, 1916, giving stations and duties." Now, we want to know where he was on November 5, 1918.

Mr. CHINDBLOM. Where is his name on the roster? What page of the roster is it on?

Mr. GRIGSBY. I can not find it.

Mr. CHINDBLOM. How is the name spelled?

Mr. GRIGSBY. Herman Du Marce.

Mr. ELLIOTT. I do not believe his name is in this roster.

Mr. GRIGSBY. I do not think it is either; but if it is, it shows where he was stationed on December 31, 1916.

Mr. CHINDBLOM. Let us determine now whether it is in this list or not (examining book).

Mr. GRIGSBY. His name is in the list on page 55, giving a list of soldiers and their original places of enlistment; it does not show where he was stationed—here it is, on page 56, showing that he was stationed at Fort Liscum, which is in the Valdez Bay precinct.

Mr. HUDSPETH. When?

Mr. GRIGSBY. On December 31, 1918. Now, where he was on November 5, 1918, we do not know, unless that was the man who voted at Copper Center.

Mr. CHINDBLOM. That is shown in Exhibit No. 1, in that "Roster of Signal Corps officers and enlisted men in Alaska, December 31, 1918," on page 56 of the record?

Mr. GRIGSBY. Yes, sir.

Mr. CHINDBLOM. And it shows Herman Du Marce stationed, December 31, 1918, at Fort Liscum; present location, Fort Liscum?

Mr. GRIGSBY. Yes, sir.

Mr. CHINDBLOM. And there is a column which is headed, "Voted," and there is nothing following his name in that column?

Mr. GRIGSBY. Nothing in that column. This list, according to the evidence, was made up from the records of the War Department and the responses of the soldiers to the question whether they voted or not.

Mr. ELLIOTT. Is Fort Liscum in the Copper Center precinct?

Mr. GRIGSBY. No, sir. Fort Liscum is two or three days' journey from Copper Center.

Mr. WICKERSHAM. It is about 65 miles.

Mr. GRIGSBY. Yes, across the sea; but the way you would go would be over to Cordova, by boat, and then by a train up to Chitina, and then by automobile on to Copper Center.

Mr. WICKERSHAM. Well, the trail runs through from Valdez?

Mr. GRIGSBY. Yes, the trail runs from Valdez; but it was blocked then.

Mr. WICKERSHAM. What has become of the telegraph line up there?

Mr. GRIGSBY. There is no possible way of finding out exactly whether the man voted at Copper Center; the only question is whether that was the same man or not; there is nothing in his being in the vicinity, because he was practically as far off as if he was in another country.

Mr. CHINDBLOM. Let me ask you this question: On pages 343, 344, 345, and 346, there is another list, which is marked, "Exhibit N," a roster of soldiers. Is there any way of finding if Du Marce was on that list?

Mr. GRIGSBY. That is the list for 1916.

Mr. CHINDBLOM. Then the list on page 56 is the only place where Du Marce's name occurs; is that correct?

Mr. WICKERSHAM. And page 55 also; page 55 is the certified list from the War Department.

Mr. GRIGSBY. I do not know what that certified list on page 55 purports to be. I have heard a lot about a list of 40 men in this case. There is a list of 40 men, and it is supposed to be a list of 40 men that voted in Alaska; but there is nothing in the record to show that that list of 40 men voted, except by tracing down the record and finding out whether the man voted or not in each case. Some of them, I think—we never have been able to find out whether they voted or not; some of them testified that they voted; and as to some of them, the record shows that they voted at Valdez.

Mr. CHINDBLOM. Well, I want to call your attention to the fact that the list on page 55 is preceded by this heading: "The records on file in the office of the Adjutant General of the Army show date and place of original enlistment and residence at date of original enlistment as follows in the cases of the soldiers mentioned."

Mr. GRIGSBY. Yes; that is all it says.

Mr. CHINDBLOM. So that is all it purports to show. The name of Herman DuMarce appears there with the date of original enlistment given as February 24, 1915; place of original enlistment, Fort Snelling, Minn.; residence, Veblen, S. Dak.

Mr. GRIGSBY. I have stated all the evidence that I have been able to find on the question of identity.

So, not charging McConnell to Mr. Wickersham, leaves 4 that voted for Mr. Wickersham; 11 that voted for Mr. Sulzer, 4 of whom the evidence shows were legal voters in any aspect of the case, according to the authorities. Of course, I claim that they all are legal.

But, taking the other view, that seven of them were illegal voters, four illegal voters voted for Mr. Wickersham, which makes a gain for Mr. Wickersham of three votes of the soldiers who testified as to how they voted. If DuMarce is allowed, it makes a gain for him of four votes.

Now, there were seven soldiers whose depositions were taken, who refused to tell how they voted; and if the committee follows the rule adopted in the last contest—if it is shown that those seven are illegal voters, the committee would pro rate them and charge them to each candidate according to the vote that the candidate received in that precinct.

But the evidence shows that they were legal voters, all but one.

Beattie testified that he was a resident of Alaska; that he voted in the election on November 5, 1918; and that he was a resident of

Alaska for five years prior to November 5, 1918; he voted at Fort Gibbon. That is all the evidence shows about him.

Mr. ELLIOTT. But does the record show that he voted at the place of his residence?

Mr. GRIGSBY. Yes, sir. This was taken on written interrogatories. Of course, Judge Wickersham will say "that is true, but it is not true"; that he simply reenlisted. But the evidence in this case shows that when he reenlisted in 1917 he was a resident of Alaska. It does not make any difference how long he had been a resident; one day would be sufficient, according to the authorities which Mr. Wickersham cited you gentlemen himself; but he did not read all there was. Now, that is Beattie's testimony.

J. M. Campbell testified that he was a resident of Tanana and had resided in Alaska for six years prior to November 5, 1918; that he voted in the precinct of his residence, Tanana.

D. M. Hocker testified that he enlisted in Columbus, Ohio, in 1914 and came to Alaska in August, 1914, and lived in Fairbanks for five years and drew reenlistment pay after July, 1917; he would have been in the reserves but for the war. He enlisted for seven years, three of which were to be active service and four years in the reserves; he was not to be called upon except in case of war; he had perfect liberty to go where he pleased. He married in Alaska and his wife owns her home and he is there yet. Now, under the authorities, his reenlistment, marriage, and owning of a home make him a legal voter there.

Mr. CHINDBLOM. Let me ask you this: Was that a reenlistment? Is not the original enlistment three years with the colors and four years with the reserves?

Mr. GRIGSBY. That is what I said.

Mr. CHINDBLOM. Well, does not the original enlistment continue all of that time, or is it a reenlistment?

Mr. GRIGSBY. It is an original enlistment of three years in the active service and four years in the reserves, and after the original enlistment in the active service he draws reenlistment pay; and so far as his status in the Army is concerned he is graded as having reenlisted; he is entitled to vote; but aside from that the other actions of this man are evidence of his citizenship in Alaska.

Mr. CHINDBLOM. You do not mean citizenship; you mean residence.

Mr. GRIGSBY. Residence; yes, sir.

John E. Pegues enlisted in 1915 at Fort Gibbon and voted at Fairbanks. I want to discuss his testimony later. His testimony showed that he was a resident of Alaska when he voted.

L. G. Selk came to Alaska June 11, 1912; after staying there a while, he went outside and enlisted on December 16, 1913, at Fort Lawton, Wash.; that is about a year and six months after he first went to Alaska. He testifies that he was outside about a year. He resided in Tanana, Alaska, since September, 1915, and has resided there ever since, and voted at the 1916 and 1918 elections; probably he reenlisted; he must have done so in view of his statement that he is a soldier.

H. B. Stenbuck refused to answer, no instruction or objection being given him. He cross-examined himself, and said that he

voted at Richardson, Alaska. I want to read you his testimony, because some of the authorities will include his case; it is on page 317 of the record, as follows:

Direct examination.

Q. State your name, age, and occupation.—A. Herman B. Stenbuck; 27 years, telegraph operator; Signal Corps.

Q. Were you a soldier in the United States Army November 5, 1918?—A. Yes.

Q. When and where did you enlist prior to November 5, 1918?—A. In Chicago, November 1, 1915.

Q. Was you a resident of Alaska when you so enlisted?—A. No.

Q. Did you vote at the election on November 5, 1918, for Delegate to Congress from Alaska?—A. Yes.

Q. Where did you vote?—A. In Fairbanks, Alaska.

Q. Did you vote for Charles A. Sulzer for Delegate to Congress from Alaska at said election?—A. I refuse to answer that question.

Then comes cross-examination of Herman B. Stenbuck; I said it was "by" him, but it was not. He says:

Q. How long had you resided in Alaska prior to November 5, 1918?—A. About two years and six months.

Q. How long had you resided in the precinct where you voted prior to said date?—A. About one year.

Q. How old were you when you enlisted in the United States Army?—A. Twenty-three years old.

Q. Had you ever voted before you enlisted in the Army?—A. No.

Q. Did you have a voting residence at any place in the United States outside of the Territory of Alaska at the time of your enlistment?—A. No.

Q. What was your purpose in coming to Alaska?—A. To better my condition from a financial standpoint.

Q. Was it your intention to remain in Alaska when your enlistment expired?—A. Yes.

Q. Were you desirous of securing a position as telegraph operator with the Alaska Railroad when it was completed?—A. Yes; if it did not take too long to complete it—

That is a pretty good answer, too.

Q. When you came to Alaska did you intend to make Alaska your home?—A. Yes.

Now, it is in evidence that these Signal Corps' boys came to Alaska at their own request; it is a matter of selection with them; and they are allowed to stay there as long as they want; it is a selected service; and this man swears that when he came to Alaska his purpose was to better his condition from a financial standpoint; that it was his intention to make it his home; and he expected to stay there after his service was completed.

I will submit to the committee authorities on that question.

In Richardson, where he voted, if you should throw out his vote—Mr. Sulzer got eight votes, and Mr. Wickersham got eight votes—there is no evidence as to how he voted; and nobody objected to his testifying; and yet the contestant claims that that vote should be charged to Mr. Sulzer. I have given you all the evidence there is on the subject. So Mr. Wickersham can gain nothing from this man.

H. G. Wescott was examined at Nulato, on written interrogatories, and was notified that he need not answer the question as to whom he voted for, and he made no answer; he neither refused to answer, nor said anything else; so he is in the same position as if he had declined to answer; and the evidence shows that he was at Nulato as a soldier only, so far as the record shows anything on the subject.

Mr. CHINDBLOM. What page of the record is that?

Mr. GRIGSBY. Page 321.

Mr. HUDSPETH. Who notified him that he did not have to answer?

Mr. GRIGSBY. These were written interrogatories which were sent down the river from Fairbanks, because nobody could go down there; they were prepared by the attorneys for both parties; and the question was asked:

Did you vote for Charles A. Sulzer for Delegate to Congress from Alaska?

And then the record says:

Contestee objects to question and instructs witness that he can not be required to disclose name of candidate voted for unless he wants to.

And he did not answer. Most of them that refused just said, "I refuse to answer." This one is in the same category, and there is no evidence as to how he voted. The bare objection or instruction is no evidence. There is not a case or an authority that says that an objection made by an attorney in a case of this kind is any evidence. There are a good many reasons why a witness might not disclose how he voted, besides the fact that somebody tells him he need not do so. That is not evidence.

Mr. CHINDBLOM. Have you any authority, as advanced by the contestant, that activity on the part of one of the parties to the election, as in this case, on the part of the contestee, seeking to avoid disclosure of the facts with reference to a proper vote, might be considered as tending toward showing a certain state of facts?

Mr. GRIGSBY. No; there are no authorities that I have been able to find on one side or the other of that question. There are political activities, or the opposition of challengers at the polls, and the urging of a man to vote at the polls—that has been admitted as worthy of consideration; but any activity to keep anybody from answering or to procure his answer—there are no authorities on that that I have been able to find; and Mr. Wickersham has cited none.

But here you have the bare fact; and the authorities do hold that if a voter is a legal voter he can not be required to answer, and if there is any doubt about the legality of his vote he can not be required to answer. So that the man simply stands on his legal rights to preserve the secrecy of the ballot. And the mere fact that the attorney for one of the parties instructs him as to what are his strict legal rights, and tells him the truth about it, can not possibly support a presumption that the man voted for the candidate that the contestant claims he did or seeks to prove that he did. Any other rule would not be reasonable. It would be easy to put a lot of soldiers on the stand and instruct them to refuse to answer. Mr. Wickersham could go to one of his supporters and say, "Here you do not have to answer when you go on the stand. I will ask you how you voted, and you just say, 'I refuse to answer'; and then the committee down in Congress will take that as meaning that you voted for Mr. Sulzer, because I took your deposition?"

The only one of these boys up at Nulato that did answer testified that they did not vote for Sulzer; I do not think there was more than one.

Now, Howard Wescott is in the category of a man who refused to answer, and if you throw out any soldier votes you will have to throw his out. Mr. Sulzer carried Nulato by 10 to 4; so that a fraction of

that vote would have to be charged to Mr. Sulzer, if you can count fractions of a vote; I do not think you can. I do not think a fraction of a vote would swing an election, if an election was a tie; I think it would take a full vote to do that; perhaps you could add fractions; I do not know about that.

Of the seven soldiers who refused to answer, there is but one who was an illegal voter, and he does not add anything to Mr. Wickersham's vote, because the vote for Nulato was 10 to 4; four-fourteenths of that vote would have to be charged to Mr. Wickersham, and ten-fourteenths of it to Mr. Sulzer. That is possibly an illegal vote; the others are residents.

Judge Wickersham has a list of soldiers who refused to answer last May at Valdez, before he filed this contest, at a time when he had mailed a petition to the Clerk of the House of Representatives which was not authorized by law, and at a time when he had no more business to inquire into the secrecy of their ballots than you gentlemen, or anybody else. These soldiers not only refused to answer, but refused to respond to their names. They are: Harry Shutts, H. R. L. Noaks, Emil Lains, Alex. A. Kott, Rudolph Elmquist, Chas. A. Agnetti, W. J. Cuthbert, T. F. Griffith, Burr M. Snyder, Harry G. Clifton, Wm. R. Rogers, C. R. Odle.

Up at Fairbanks, the attorney for Mr. Wickersham went before the district judge, Judge Bunnell, about the same time, and tried to get him to issue subpoenas in his purported contest, and Judge Bunnell rendered an opinion, which is in print, and of which I have a copy, and it is very clear, and I would like to put it in the record at this time, so that you gentlemen will have it before you.

The CHAIRMAN. That merely is a statement of the law, is it not?

Mr. GRIGSBY. It is merely a statement of the law.

Mr. CHINDBLOM. Well, more correctly, it is Judge Bunnell's opinion of the law.

Mr. GRIGSBY. Yes, sir. Judge Bunnell recites that the attorney for Mr. Wickersham thought that he ought to issue the depositions and hear the case; because it would be better for the depositions to be taken before the district judge than before a notary, so he could pass on legal objections.

But Judge Bunnell refused to take the depositions; he would not have been sitting as a court if he had taken these depositions; he would have been sitting the same as a notary sits—or any other magistrate that is authorized to take depositions in these contest cases. He takes them in a notarial capacity, the same as a notary does; he has the same authority and no more; it is not a court proceeding.

But as a judge, knowing the law, he saw that there was no authority of law to take the depositions in any contest, except one that was commenced according to law; and he said that a contest had not been so commenced; his opinion is very clean on the subject.

Judge Wickersham's attorney, however, wanted Judge Bunnell accused of all kinds of election frauds. Judge Wickersham's attorney seems to have had sufficient faith in Judge Bunnell to want the depositions taken before him, so that he could overcome the legal objections. Judge Bunnell is now being held up by the Judiciary Committee.

DECISION OF DISTRICT COURT, FOURTH JUDICIAL DIVISION, ON APPLICATION TO ISSUE SUBPŒNAS IN RE WICKERSHAM CIVIL NO. 2454.

In the district court for the Territory of Alaska, fourth judicial division:

In the matter of application of James Wickersham for issuance of subpœnas under section 110, Revised Statutes of the United States, No. 2454. Decision and order.

The ptition herein is as follows:

"In the matter of application of James Wickersham for issuance of subpœnas under section 110 Revised Statutes of the United States, No. 2454. Petition.

"To Hon. Charles E. Bunnell, district judge, division 4, Alaska:

"Comes now your petitioner, James Wickersham, by his attorney, Morton E. Stevens, and respectfully shows to the court as follows:

"1. That at a general election held in the Territory of Alaska on November 5, 1918, your petitioner was a candidate for election to the office of Delegate to Congress on the Republican ticket and one Charles A. Sulzer was a candidate for said office on the Democratic ticket. That the said Charles A. Sulzer is now deceased, and this proceeding is therefore *ex parte*.

"2. That on or about the 17th day of April, 1919, the canvassing board, created by law to canvass the returns of said election, certified that said Charles A. Sulzer had been duly elected at said election.

"3. That your petitioner is now contesting the legality of said election and the validity of said certificate in proper proceedings before the House of Representatives of the United States, and for the purpose of said contest desires to obtain certain testimony concerning said contested election, and desires to examine under oath respecting the said contested election the following-named persons stationed at Fairbanks, Alaska, who were at the time of said election enlisted men in the military service of the United States and voted at said election, and whose right so to do is, in said contest, questioned, viz, John E. Pegues, Herman B. Stenbuck, E. D. Whittle, and Durwood M. Hocker, and your petitioner desires the issuance of a writ of subpœna directed to each of said persons to attend, for said examination, before the honorable judge of said court on the 21st day of May, 1919, in the district court room at the courthouse in Fairbanks, Alaska, at the hour of 2 o'clock p. m. of said day, then and there to be examined respecting said contested election, pursuant to the provisions of section 110 et seq. of the Revised Statutes of the United States.

"And your petitioner will ever pray,

"MORTON E. STEVENS,
"Attorney for Petitioner.

"Territory of Alaska, ss:

"Henry T. Ray, being first duly sworn on oath, deposes and says: That he is the agent of the petitioner herein, and that he has heard read the foregoing petition, and knows the contents thereof, and the facts therein stated are true as he verily believes.

"HENRY T. RAY.

"Subscribed and sworn to before me this 14th day of May, 1919.

[SEAL.]

"CECIL H. CLEGG,
"Notary Public in and for Alaska.

"My commission expires October 31, 1919."

Chapter 8 of the Revised Statutes, sections 105 to 130 and amendments thereto, covers the subject of a contested election for a seat in the House of Representatives in so far as Congress has determined the same by legislative enactment. Under the Constitution of the United States each House is made "the judge of the elections, returns, and qualifications of its own Members," and in order to correctly determine the merits of a contested election the House of Representatives has the power to prescribe such rules of procedure as will in its judgment best subserve the ends of justice and determine the matter as of right between contestant and contestee, always bearing in mind the fact that the people of the district "are the real parties in interest."

On the 5th day of November, 1918, a general election was held in the Territory of Alaska for the purpose of electing a Delegate to Congress from Alaska, members of the Territorial legislature, and four road commissioners. All of the returns from the several precincts were not received by the canvassing

board until about the 16th day of April, 1919. Thereafter and on the 17th day of April, 1919, the canvassing board declared Charles A. Sulzer elected Delegate to Congress from Alaska. The said Charles A. Sulzer died on the 15th day of April, 1919, and to fill the vacancy caused by Mr. Sulzer's death the governor of the Territory has called a special election to be held on the 3d day of June, 1919.

Section 110 of the Revised Statutes under which the petitioner, by his agent, is appearing provides:

"When any contestant or returned Member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to either of the following officers, who may reside within the congressional district in which the election to be contested was held:

"First. Any judge of any court of the United States.

"Second. Any chancellor, judge, or justice of a court of record of any State.

"Third. Any mayor, recorder, or intendent of any town or city.

"Fourth. Any register in bankruptcy or notary public."

This section must be construed in connection with the plain provisions of the following sections:

"SECTION 105. Whenever any person intends to contest an election of any Member of the House of Representatives of the United States he shall, within 30 days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest.

"SEC. 106. Any Member upon whom the notice mentioned in the preceding section may be served shall, within 30 days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election; and shall serve a copy of his answer upon the contestant.

"SEC. 107. In all contested-election cases the time allowed for taking testimony shall be 90 days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first 40 days, the returned member during the succeeding 40 days, and the contestant may take testimony in rebuttal only during the remaining 10 days of said period.

"SEC. 108. The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice in writing of the time and place when and where the same will be taken, of the name of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest if by the use of reasonable diligence personal service can not be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend and one day for preparation, exclusive of Sundays and the day of service. Testimony in rebuttal may be taken on five days' notice.

"SEC. 111. The officer to whom the application authorized by the preceding section (Sec. 110) is made shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their attendance before him at some time and place named in the subpoena in order to be examined respecting the contested election.

"SEC. 121. The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections 105 and 106.

"SEC. 122. The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively.

"SEC. 125. The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpoena, where any has been served, shall be attached to the depositions when completed.

"SEC. 126. A copy of the notice of contest, and of the answer of the returned Member, shall be prefixed to the depositions taken and transmitted with them to the Clerk of the House of Representatives."

Sections 110 to 130, inclusive, of the Revised Statutes contain no provisions to meet the present emergency. If they did, the petitioner would avail himself of them. He does not comply with section 105, because in the very nature of things it is impossible for him to do so. He can not "give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same" when the one who would have become a Member, had he lived, died two days before the canvassing board determined the result of the election.

How can it be said that the death of him who would have been the contestee had he lived abrogates the statutes and confers upon the petitioner herein the privilege of initiating the proceeding herein styled "ex parte"? This must be the view taken by the petitioner, for the last sentence of the first paragraph of the petition reads: "That the said Charles A. Sulzer is now deceased, and this proceedings is therefore ex parte."

No officer mentioned in section 110 is authorized to undertake to establish a rule of procedure to supplement the existing law; nor, on the other hand, should he follow a course of action wholly unauthorized. Undoubtedly the House of Representatives will, as soon as it is advised of the present emergency, determine, by virtue of its inherent power, a rule of procedure, if such be necessary, whereby all rights of the petitioner will be entirely safeguarded. (Congress will convene in special session on May 19, 1919.)

Counsel for petitioner states that the petition is presented to the judge of this court upon telegraphic request by petitioner to his agent, Henry T. Ray. He insists that, since there is no contestee, subpoenas should issue and testimony should be taken ex parte. Under what rule of reason or principle of law this contention is based, counsel does not state nor am I able to discover. Counsel indicates that petitioner's contest was recently filed. The date is not given in the petition. Had Charles A. Sulzer lived and had he become a "Member of Congress," he would have had 30 days after the service upon him of notice of contest to answer such notice and serve a copy of his answer upon the contestant. No testimony would have been taken prior to the serving of the answer unless perchance upon stipulation of contestant and contestee. The petition is unaccompanied by any notice of contest; there is no service, nor could there be at the present time; there is no issue joined; there is no notice to take depositions with the proof or acknowledgment of the service thereof. No officer mentioned in section 110, in the event he should issue subpoenas and take testimony, could comply with the provisions of section 121 in taking testimony, nor could he comply with sections 125 and 126 in transmitting the same to the clerk of the House of Representatives.

Counsel also states one of the reasons for petitioning to take testimony before the judge of this court is that certain legal questions could be determined by the court. Counsel must be under a misapprehension concerning the functions and duties of the officers mentioned in section 110 in the matter of taking depositions in contested-election cases. In *re Howell* (119 Fed., p. 467) the court said, in passing upon an application for the production of papers under section 123, where notice of contest had been given to the contestee and where notice of application as above had been served upon contestee:

"The authority given by the section of the Revised Statutes referred to can not be questioned, and I can not refuse an application which is brought within its terms. It is immaterial whether an issue has yet been made up or not, because if testimony were being taken I would have no right to pass upon its relevancy or irrelevancy."

The statement "it is immaterial whether an issue has yet been made up or not" refers to the provision in section 123, reading:

"The officer shall have power to require the production of papers."

If the House of Representatives shall prescribe a rule of procedure in keeping with petitioner's contention and an application meeting the requirements thereof is presented to an officer mentioned in section 110, subpoenas should issue as a matter of course.

It necessarily follows from the foregoing that the application of the petitioner to the judge of the court, who is one of the officers mentioned in section 110, to issue subpoenas to the persons named in said petition to appear and testify at 2 p. m. on the 21st day of May, 1919, must be denied, for the same is premature, and the officer is without jurisdiction in the premises.

CHARLES E. BUNNELL,
District Judge.

Dated May 16, 1919.

In addition to the nine that I have named, there are C. R. Odle and H. R. L. Noaks, who were in the Signal Corps, and voted at this election, and Judge Wickersham did not take their depositions. Mr. Odle was present at Valdez on August 30, 1919, as were all of the others; they were either present or available there, or were at Cordova; and every opportunity was afforded to Judge Wickersham to take the depositions, but he did not do so.

Of the list of 40 that Judge Wickersham claims voted in Alaska, there were 23 who testified that I have covered; and the case of Herman DuMarce is submitted to you, gentlemen, on a question of identity; he was not examined. Harry Morgan gave an affidavit. That makes 25.

That leaves 15 out of the 40; and of those 40 the 11 whose depositions Judge Wickersham did not take, bring it up to 36. Then there were some others, Ellison, Elmquist, and Siekers, Whittle, Craft, and Leonard in that list.

Mr. WICKERSHAM. Whittle's deposition was taken, but it never reached here; it did not reach the Clerk of the House; we do not know what became of it.

Mr. GRIGSBY. No; I do not even know that it was taken, except that you say so, Judge Wickersham; I can not officially, for the purposes of this case, admit the truth of your statement.

Mr. WICKERSHAM. I never saw that; but I was informed that he made one.

Mr. GRIGSBY. Now, I have got to the end of that. Here are six soldiers. Ellison, according to the election register, voted at Golkana; a man of that name did; we do not know how he voted; or whether he voted at all; it was the same as the other case. The vote at Golkana was: Sulzer, 7; Wickersham, 5; therefore five-twelfths of that vote should be charged to Wickersham and seven-twelfths to Sulzer, if it was an illegal vote.

As to Elmquist, Judge Wickersham was notified of his presence there, and did not take his deposition: he was always available. These men were all in that vicinity all the summer.

As to Searce, the evidence showed that he went to China: I do not know where he is, or anything about him. Mr. Wickersham's list says he has gone to China.

As to Whittle, there is nothing in the record; so I can not discuss that.

As to Craft, Mr. Wickersham's list showed that he went to Nome, and I think he did go to Nome; I do not know where he went, and the record does not show it.

Dr. Leonard was a post surgeon; I do not know where he was; if he was a contract surgeon, he was entitled to vote: if he was a commissioned officer, he was entitled to vote, if he was a resident of Alaska. There were four Regular Army soldiers who voted at Fort Liscum, in the Valdez Bay precinct—McEvoy, Joseph Newman, R. B. Hamilton, and Sam Campbell. Mr. Wickersham made no attempt to show how those particular men voted, because he figured out the percentage of the vote there in another way, and charges 23 illegal votes to Sulzer and 7 to himself.

The only one of these who testified as to how he voted was Joseph Newman, who testified that he voted for Wickersham. He has been in the Regular Army all the time he has been in Alaska, and prob-

ably reenlisted, although there is no direct evidence that he did. If he did not—if any of the voters are illegal, he is one of them; the length of time that he has been there, since 1912, affords a presumption that he reenlisted in Alaska.

The other three cases were not gone into; the men were not examined. Mr. Wickersham did not take their depositions, because he claims that all the voters in Valdez precinct who were soldiers should be thrown out, because they were not residents of the precinct.

Now, the only evidence as to these men, Hamilton and McEvoy, is that they had been in the Regular Army for some time; there is no evidence as to when they enlisted; there is opinion evidence that they came from the States, and came up to Alaska in the Army, but there is no positive evidence that they were not residents of Alaska for years prior to their enlistment, and no evidence as to how they voted.

Now, I have covered 49 soldiers; and according to the authorities which I shall present, if soldiers who have no residence in Alaska, except purely as soldiers are to be cast out—if their votes are to be rejected, then Mr. Wickersham makes a gain of 3 votes, and that is an absolutely conservative classification of these votes.

Instead of 70 soldiers, as he claims, having voted illegally for Sulzer, an absolutely fair classification of these soldiers—I will furnish the committee a copy of this statement—shows just 3 votes, and those 3 may be legal.

The CHAIRMAN. Now, that statement is upon the assumption which you suggest, that the soldier vote as a soldier vote is not to be counted.

Mr. GRIGSBY. Yes, sir; where the soldier has no other residence than as a soldier.

Mr. CHINDBLOM. That covers the 49 men in the Regular Army?

Mr. GRIGSBY. The 49 men in the Regular Army; all the men in the Regular Army that are in his list.

Mr. CHINDBLOM. You say you will furnish a copy of that statement. Should not that statement go in the record?

Mr. GRIGSBY. I thought it would be of use to the committee—

Mr. CHINDBLOM (interposing). Well, rather than have separate papers, so far as I personally am concerned, I would prefer to have it all in the printed document.

Mr. HUDSPETH. I think it should go in the record.

Mr. GRIGSBY. I will have a copy of it made for the committee.

The CHAIRMAN. The statement will be inserted in the record at this point.

(The statement referred to is as follows:)

Soldiers whose depositions were taken and who testified for whom they voted.

Voted for Sulzer.	Place.	Record page.	Voted for Wickersham.	Place.	Record page.
Wm. T. Barr.....	Fort Gibbon....	255	Clement Stroupe.....	Nulato.....	321
Ike A. Beale.....	Valdez.....	623	D. H. Tyer.....	Valdez.....	205-206
Jas. W. Boon.....	Nulato.....	319	H. W. Whitman.....	Sitka.....	246
H. B. Conover.....	Sitka.....	253	H. Labiskie.....	Craig.....	64
R. N. Cummins.....	do.....	252			
M. Faust.....	Valdez.....	71-76			
G. B. Hawley.....	Sitka.....	253			
P. F. McQuillan.....	do.....	251			
H. Van Wyck.....	Valdez.....	64-71			
J. B. Looney.....	Seward.....	60-61			
J. P. Lake.....	Nulato.....	319			

Eleven testified they voted for Sulzer and four testified they voted for Wickersham.

Of the 11 who voted for Sulzer the following were legal voters: William T. Barr, James W. Boon, M. Faust, P. F. McQuillan.

William T. Barr testified (rec., 255) that he enlisted at Fort Gibbon, Alaska, in January, 1917; that he was a resident of Alaska when he enlisted; that he had resided in Alaska more than three years prior to November 5, 1918.

James W. Boon testified (rec., 319) that he reenlisted at St. Michael, Alaska, in November, 1916, and that he was a resident of Alaska when he reenlisted; that he resided in Alaska prior to November 5, 1918, for a period of five years.

M. Faust, a resident of Alaska for many years.

P. F. McQuillan testified (rec. 251) that he was out of the service and a resident of Alaska for a period of nine months, and then reenlisted.

Deducting the above four, to wit, Barr, Boon, Faust, and McQuillan, from those who voted for Sulzer, whose residence in Alaska, so far as the testimony shows, was only as soldiers in the Army, we have four of the same class who voted for Wickersham.

If these votes are held to be illegal, then 3 votes should be deducted from Sulzer's plurality.

H. R. Morgan voted at Nulato (rec. 684). Deposition not taken. An affidavit of Morgan was introduced in evidence by Wickersham in rebuttal. No opportunity for cross-examination. Affidavit made under compulsion.

H. Du Marce: The election register (rec. 337) shows that a man of the same name voted at Copper Center for Sulzer. There is no identification of the election register and no proper proof that H. Du Marce appears as one of the voters at Copper Center, except the purported copy of the election register.

Refused to answer in this contest: E. E. Beattie (rec. 255), Fort Gibbon; J. M. Campbell (rec. 256), Tanana; D. M. Hocker (rec. 298), Fairbanks; J. E. Pegues (rec. 301), Fairbanks; L. G. Selk (rec. 257), Tanana; H. B. Stenbeck (rec. 317), Richardson; Howard Wescott (rec. 321) Nulato (did not answer).

E. E. Beattie (rec. 255) testified he was a resident of Alaska when he enlisted in 1917, and had been a resident for five years prior to November 5, 1918. Voted at Fort Gibbon.

J. M. Campbell (rec. 256) testified he was a resident of Alaska when he enlisted at St. Michael, February 11, 1915, and had resided in Alaska for six years prior to November 5, 1918. Voted at Tanana.

D. M. Hocker (rec. 298) testified he enlisted in Columbus, Ohio, in 1914; came to Alaska in August, 1914; lived in Fairbanks for five years; drew reenlistment pay after July, 1917; would have been in reserves but for war; married, wife owns home; enlisted for seven years, four in active service, rest in reserves. Voted at Fairbanks.

J. E. Pegues (rec. 301) reenlisted in Alaska in 1915. Voted at Fairbanks; see testimony.

L. G. Selk (rec. 257) came to Alaska June 11, 1912. Enlisted December 16, 1913, at Fort Lawton, Wash.; returned to Alaska; has resided there ever since. Voted at Tanana.

H. B. Stenbeck (rec. 317) refused to answer without any objection. Voted at Richardson.

Howard Westcott (rec. 321). Don't appear whether he refused to answer or not. Voted Nulato.

SOLDIERS WHO REFUSED TO ANSWER IN MAY.

Assembled at Valdez, on and prior to August 30.—Wickersham refused to take their depositions.

Chas. A. Agnetti (rec. 332), Valdez. Nothing but alleged registration record, not identified; Agnetti's identity not proven.

Howard G. Clifton (rec. 332). No proof whatever that he voted; unidentified voting list at Valdez has one Harry G. Clifton.

William J. Cuthbert (rec. 332), Valdez, registration record unidentified; no identity proven.

T. F. Griffith (rec. 332), Valdez, alleged registration record; no identity; record shows name "Griffeth."

A. A. Kott (rec. 331), Valdez; registration record not identified; no proof of identity; this list contains names of persons who voted and who offered to vote.

Emil Lains (rec. 331), Valdez, registration record not proven and no proof of identity.

W. R. Rogers (rec. 332), Valdez, registration record not proven and no proof of identity.

H. Shutts (rec. 331), Valdez, registration record not proven and no proof of identity.

B. M. Snyder (rec. 332), Valdez, alleged registration record shows "Bur M. Snider," no proof of identity, registration record not identified; know nothing about him.

C. R. Odle (rec. 333), Valdez; R. L. Noaks (rec. 331) Valdez.—C. R. Odle was held at Valdez; Wickersham refused to take his deposition. R. L. Noaks testified fully and discussed fully his residence in Alaska prior to reenlistment.

Other alleged soldier votes.—George E. Doyle, Haines, record 177; Soldier Gross, Haines, record 177; Soldier Wilson, Haines, record 177.

George E. Doyle testified in jail; veracity doubtful; see testimony.

Soldier Gross.—No evidence he voted nor how, except that of Doyle, who testified in jail.

Soldier Wilson.—Same as Gross.

Other soldiers, depositions not taken.—J. A. Ellison, Gulkana (Sour Dough), record 340; R. Elmquist, Valdez, record 331; R. L. Searce, no record; E. D. Whittle, no record; Leo Kraft, no record; Dr. Leonard, no record.

Ellison—no evidence except purported certified copy of register; not properly identified.

Elmquist—no evidence except purported certified copy of election; register not properly identified.

Searce—gone to China; don't know that he voted, or where.

Whittle—no record whatever; don't know that he voted.

Kraft—went to Nome; no record of his voting or that he voted.

Dr. Leonard—no record that he voted; post surgeon, contract, Fort Gibbon.

Regular Army soldiers voting at Valdez Bay precinct.—Jerry T. Allen, Valdez Bay, record 244; John T. McEvay, Valdez Bay, record 244; Jos. Newman, Valdez Bay, record 245.

These four soldiers were in the Regular Army and had been stationed at Fort Liscum, in the Valdez Bay precinct, for some years. No evidence as to their place of enlistment or residence prior to enlistment, nor how they voted, except that Jos. Newman testified he voted for Wickersham.

Wickersham also claims that Dr. J. W. Johnson and wife and A. J. Penttinen were Regular Army people, but they were not. Dr. Johnson and wife (rec. 596) were old residents of Sitka, and Penttinen (rec. 244) was an inducted soldier. The only one of the above votes that could be thrown out is that of Newman.

The CHAIRMAN. Let me ask you this question: Does this list contain the names and the places where these men voted?

Mr. GRIGSBY. No, sir; it does not; not all of them.

The CHAIRMAN. Have you that information?

Mr. GRIGSBY. Yes; I can add all of that when I put it in the record.

The CHAIRMAN. That will be very helpful to the committee, and I think that information should be furnished.

Mr. CHINDBLOM. Is the place in the record shown, where you refer to it?

Mr. GRIGSBY. Yes; with the permission of the committee I will add that in there within the next two days.

The CHAIRMAN. I think that will aid us very materially.

Mr. GRIGSBY. Now, the precedent that is most important in this case, of course, is the decision of the last contest from Alaska on this same proposition. The decision there affected the votes of 36 voters at Fort Gibbon and Eagle, who were stationed at forts, and there was no evidence in the case as to their having been in Alaska in any other capacity than as soldiers or of their having done anything to manifest an intention to claim a residence or to perform any act indicating that they had taken up Alaska as their home, but the com-

mittee adopted the broad theory that a soldier in the service of the United States can not acquire a residence or change his domicile while in such service.

The CHAIRMAN. Let me ask this: Were any of those men in 1916 members of the Signal Corps?

Mr. GRIGSBY. None of those that were thrown out.

Mr. WICKERSHAM. Yes; there were. Selk was one.

Mr. GRIGSBY. Selk may have been a Signal Corps man, but there was no more evidence as to him having done anything to acquire residence than there was as to any of the rest of them. There is nothing whatever to make a Signal Corps man a resident any more than any other soldier unless the Signal Corps man does something whereby he becomes one, and the authorities hold that any soldier who does anything which indicates his intention to change his domicile can do it while he is in the Army.

The authority which has been cited against me is the decision in the last contest by Riley Wilson, and Judge Wickersham had quite a fit of indignation over the way that Riley Wilson had been treated in the last contest. I do not know who treated him wrong. I was present when the argument was made before the committee; and I was present when the argument was made in the House; and I do not know anybody who tried to impute any improper motives to Riley Wilson. They criticized some of his findings. Some of those who criticized them voted the other way in the House, but so far as Mr. Wilson was concerned he was treated courteously at all times.

Mr. CHINDBLOM. Do you mean the chairman of the committee in the Sixty-fifth Congress?

Mr. GRIGSBY. Yes, sir. Mr. Wickersham said if he had been treated like Mr. Wilson was he would have fought—that is what I am referring to. But I do not know in what way Mr. Wilson was abused. At the same time I have not the same reverence for his opinion in this particular case that Judge Wickersham has. The leading case cited by Mr. Riley Wilson in 1916 was the Ames case; that was the case of a man who was elected to the United States Senate from Mississippi; and Mr. Conkling—

Mr. CHINDBLOM (interposing). Do you mean Roscoe Conkling?

Mr. GRIGSBY. Yes; Roscoe Conkling, the chairman of the Judiciary Committee of the Senate, reported that Mr. Ames was not entitled to the seat, because he was not an inhabitant of the State of Mississippi at the time he was elected. The report of that case is contained in "Contest Election Cases, United States Senate, 1789 to 1885."

The report against Ames getting his seat contains no opinion; it states the facts and concludes with a resolution that Gen. Ames was not entitled to the seat; that was the report of the committee which Mr. Riley Wilson cited.

Well, the Senate of the United States overruled that opinion, and Gen. Ames was seated after a strenuous debate; he was seated on the 18th of March.

Mr. O'CONNOR. He was seated, you say?

Mr. GRIGSBY. Yes; they seated Gen. Ames.

Mr. HUDSPETH. I understood Judge Wickersham to say that other night that he was not seated.

Mr. GRIGSBY. So did Riley Wilson say that; Judge Wickersham can blame it on Riley Wilson.

Mr. WICKERSHAM. I just read that as an authority.

Mr. O'CONNOR. I was under the impression that you stated that he was not seated.

Mr. HUDSPETH. That was the impression that I had.

Mr. WICKERSHAM. I just read Mr. Wilson's opinion.

Mr. HUDSPETH. Which stated that he was not seated?

Mr. GRIGSBY. Yes, sir. Now, I have read all of this case; and Gen. Ames's supporters argued that his filing of his candidacy down there in Mississippi showed his intention to become a resident of the State, sufficiently to make him an inhabitant of the State under the law.

And finally the resolution was amended in the Senate by striking out the word "not," so as to make it declare that Gen. Ames was entitled to his seat; and it passed by a vote of 40 to 12, in 1870.

Mr. O'CONNOR. Well, Gen. Ames was seated, although Mr. Riley Wilson said that he was not seated?

Mr. GRIGSBY. Riley Wilson does not say that he was not seated; Riley Wilson cites the report of the Judiciary Committee; but he gives the speech of Senator Conkling, I think it is——

Mr. O'CONNOR (interposing). And the report of the Judiciary Committee was not accepted by the Senate?

Mr. GRIGSBY. The report of the Judiciary Committee was overruled by the Senate, and Gen. Ames was seated as a United States Senator by a vote of 40 to 12. And that is the authority that Riley Wilson had for throwing out the soldier vote in the 1916 contest. Mr. Wilson quotes the speech of Senator Conkling, made in the Senate and not before the Judiciary Committee, telling why Ames should not be seated.

There are also contained in this volume [indicating] numerous other speeches which were made; and the Senate overruled the Judiciary Committee and seated Gen. Ames.

Now, what other authority does Riley Wilson cite for his opinion? The case of *Taylor v. Reading*; that is a Pennsylvania case. Judge Wickersham read that case the other day.

Mr. CHINDBLOM. In order to get the record straight, I would like to observe at this point that the record in the Ames case is contained in the "Compilation of Senate Election Cases, 1789 to 1885," on pages 279-281.

Mr. HUDSPETH. You have not the speeches made in the Ames case, have you?

Mr. GRIGSBY. Here they are, in the Congressional Globe.

Mr. HUDSPETH. Containing all the arguments?

Mr. GRIGSBY. Yes, sir; they are in this volume [indicating] of the Congressional Globe, part 3, second session, Forty-first Congress, 1869-70.

The action of the Senate in seating Mr. Ames is found on page 2349 of that volume.

Judge Wickersham read from the case of *Taylor v. Reading*, from Pennsylvania; he read the report of that case; that was a law case. And I asked him if that case did not admit some soldier votes. I could not get an answer. But on page 240 of Rowell's Contested Elec-

tion Cases, it seems to show that there were 20 soldier votes in question; there were differences in regard to certain soldier and pauper votes. The soldiers had been for years stationed in the precinct; some of them had resided there before their enlistment, and some had reenlisted from there although their former enlistment was from other places. The majority were the votes of soldiers who had come from other places and who had not reenlisted.

That is the case cited by Riley Wilson.

The CHAIRMAN. What authority is that that you are quoting?

Mr. GRIGSBY. Rowell's Contested Election Cases.

The CHAIRMAN. In what Congress?

Mr. GRIGSBY. Forty-first Congress, page 240. That case is also reported in Contested Election Cases, second session, Forty-first Congress, Miscellaneous Documents, 1865-1870. It is reported more fully here [indicating], and the committee will notice that this report, page 661 in that volume, was made on March 29, 1870. Gen. Ames was seated on April 1; and this report was made just a couple of days before Gen. Ames was seated; and the majority of the committee stated as follows, with reference to these 20 soldier votes:

The views here expressed and the judicial opinions here given might perhaps exclude all or nearly all of these 20 votes; the committee, however, leaning always toward sustaining the right of suffrage and giving always to the returned Member the benefit of every doubt, has divided this list into three classes. The first class consists of persons who resided in the precinct at the time of their first enlistment, and consequently did not change their residence. There are three of this class, to wit, James Cleary, Peter Hoban, and James Larkin, and their votes are allowed.

The second class consists of those persons who had enlisted but once, who resided at the time of their enlistment outside of this precinct and who had done nothing to indicate any determination on their part to change their residence and who had made no election of this particular place as their place of residence since the time of their enlistment. On the contrary, two of this class testified that at the very time they voted their families resided elsewhere, and it is clearly proven that the entire class, seven in number, left the place soon after the election and have not returned; they were all single men except these two above referred to * * *. These 7 votes were rejected, being part of the 51.

The third class consists of those who did not reside in the district at the time of their enlistment but remained for some years, in some cases reenlisting once, twice, and in one case three times. Most of these men have either purchased or rented property, had their families in the district, and had given other evidences of an intention to elect this precinct as the place of their abode. These 10 votes are allowed.

Now, that is Riley Wilson's authority—this case and the Ames case; and this case utterly repudiates the doctrine that a soldier can not acquire a residence.

The CHAIRMAN. What case is that?

Mr. GRIGSBY. Taylor v. Reading.

Mr. CHINDBLOM. That was in the House, was it?

Mr. GRIGSBY. That was a House case.

Mr. O'CONNOR. Was that a committee report from which you have been reading?

Mr. GRIGSBY. That was a committee report.

Mr. O'CONNOR. And it was adopted by the House, was it?

Mr. GRIGSBY. I presume it was. I have not got to that yet.

Now, I want to read the minority report. The minority report was rendered on April 4, 1870, which was after Gen. Ames was seated, and it starts out with the following statement—page 679:

Since the action of the Senate on the 1st day of April, 1870, on the admission to a seat in the Senate of Gen. Ames, who at the time of his election (in the language of the majority of the committee in this case as touching this soldier vote) was not in Mississippi "by his own volition but by command of his military superiors," I am compelled, therefore, to say that I can not coincide with the majority committee in their rejection of seven of the votes known as the soldier vote in the eighth division of the twenty-third ward. * * *

In *Bowen v. Gibbon*, Justice Carter, of the District of Columbia, held "that an officer or enlisted man neither gained nor lost a residence; his residence was where he enlisted." In view of this decision, I insist that when the term of enlistment expired these soldiers, having the animus manendi, gained a residence eo instanti in this division, and it was their residence at the time of their reenlistment; and, if so, they were not disqualified by reason of their non-residence. This was likewise the decision in the case of Gen. Ames above referred to. I can not reject the foregoing 7 votes; I retain the whole 20 soldier votes in the return of votes for the sitting Member.

And further on he comments on the Ames case.

The other report, which disallows the votes of some of these soldiers, was rendered before the Ames decision. Now, there are other authorities——

Mr. CHINDBLOM (interposing). Let us get in the record what was done in that case.

Mr. HUDSPETH. Yes: let us get that in the record.

Mr. GRIGSBY. You can not always tell from that book [indicating]. I presume the report of the majority was adopted.

Mr. CHINDBLOM. But what case was that?

Mr. GRIGSBY. *Taylor v. Reading*.

Mr. CHINDBLOM. Well, on page 661, in the syllabus, I find it stated that the report was sustained by a vote of 114 ayes and 45 noes.

Mr. GRIGSBY. That was the majority, then; I did not notice. The majority report allowed 10 votes.

The CHAIRMAN. And disallowed 10?

Mr. GRIGSBY. No: I see that the majority report allowed 13 votes, 3 of which were votes of those who resided in the precinct before they enlisted; and then allowed 10 votes of those who either reenlisted in the precinct, or married, or had homes; and so, according to the majority report, there were 13 allowed altogether.

Mr. O'CONNOR. And the minority report wanted them all to vote?

Mr. GRIGSBY. The minority report wanted them all to vote, on the authority of the Ames case, which would have allowed them all to vote.

Mr. CHINDBLOM. Will you give the exact title of this case as it is reported?

Mr. GRIGSBY. In some of the volumes it is called the "Reading case"; and in some it is called "*Taylor v. Reading*."

Mr. CHINDBLOM. I see that the minority report was written by Samuel J. Randall.

Mr. GRIGSBY. I want to say to you gentlemen that nearly all of the soldiers who have not testified, or whose testimony has not been taken, as well as those whose testimony has been taken and who are charged to Mr. Sulzer, come within these authorities. They are not in Alaska simply as soldiers; they come there at their own request; they rent

houses; they take part in civic affairs; they pay taxes, marry, and mingle with other citizens. They are not stationed at any fort or arsenal. They come squarely within the classification of this case. And any soldier who did anything evidencing an intention to make Alaska his home is entitled to vote, according to the Ames case.

Now, I want to go back for a minute. I want to call attention again to section 1860 of the Revised Statutes, which prescribes the qualifications of voters in the Territories. That has already been discussed. I simply cite section 1860 of the Revised Statutes to show that it never was the intention of Congress that a soldier should not, under any circumstances, vote in a Territory. I do not claim that this section applies especially to Alaska. The qualifications of voters in Alaska are fixed by our act of 1906, which provides that a man must be a bona fide resident for one year; and a "bona fide resident" means——

Mr. O'CONNOR (interposing). By "our act" do you mean the act of the Territorial legislature?

Mr. GRIGSBY. No; the act of Congress of 1906, which prescribes that a man must be a bona fide resident of Alaska; "bona fide resident" has a well-defined meaning in law; it means something more than remaining there the requisite amount of time, with the requisite intention; and the provisions in most of the States are that the mere presence or absence of a soldier in the service of the United States within a State shall not cause him to acquire or lose residence. That is also the common law which is in force in Alaska. A man must be a bona fide resident in Alaska a year in order to vote. I will admit that.

But this proposition advanced by the contestant is that he can not, if he is a soldier, become a bona fide resident. There is not anything in the decisions that say so; and Congress, on the contrary, in legislating for all the other Territories, says that, even while he is in the Army, the mere fact that he is in the Army in a Territory for six months will make him a voter. That is a limitation which is put upon the legislature.

The legislature of all Territories, now or hereafter organized, shall have the power to fix the qualifications of voters subject to certain limitations; and one of the limitations is, that no officer, soldier, seaman, mariner, or other person in the Army or Navy of the United States shall be allowed to vote in any Territory by reason of being in the service therein—that is, for that reason alone—unless such Territory is, or has been, for a period of six months, his permanent domicile; that is, while he is a soldier, although Judge Wickersham tries to make it appear that that means after he is discharged from the Army. But that is ridiculous, because after he is discharged from the Army he comes within the general residential qualification; and the legislature of a Territory might say the residence for voting purposes shall be 90 days.

Now, the law does not say that there shall have to be six months' residence in the case of a discharged soldier. A discharged soldier is not subject to any penalty for having been in the Army. The period of residence might be 90 days for an ordinary citizen; but according to Judge Wickersham, it would have to be six months for a discharged soldier.

I will read that section and show you. This is from section 1860, Revised Statutes [reading]:

No officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops—

Not “who has been attached to troops,” but “attached to troops.”

In the service of the United States shall be allowed to vote in any Territory by reason of being on service therein.

Not “by reason of having been on service therein.”

Unless such Territory is and has been—

While he is on service therein—

for a period of months, his permanent domicile.

Showing that Congress intended that soldiers domiciled in a Territory for six months could vote. Now, there is your congressional view of it in that Territory.

Now, are you to say that a man must be a bona fide resident of Alaska for a year in order to vote, and that a soldier can not be a bona fide resident if he does everything that everyone else does to become one? If you go up there for a year, Mr. O'Connor, for a year to visit, your mere presence does not make you a citizen. You must do certain things. And the only reason that a soldier can not acquire a residence the same as anybody else is because he may not have the opportunity; he may not do what is necessary; but if the nature of his service is such that he has all the opportunity anybody else has under this authority which Mr. Wickersham has cited and which I read to you he can become a citizen. If the nature of his residence or his acts is inconsistent with his having a domicile anywhere else, then he is domiciled in that Territory. I have cited abundant authorities in my brief on that proposition from decisions of courts, and I find no decisions to the contrary.

It is all a hoax, this whole soldier business. The only soldiers that are in question are those who the evidence shows had no other residence up there except as soldiers; and it may have been the intention of Congress that soldiers should be allowed a vote in any Territory under the sun. There is room for that argument; but I do not want to claim it in this case.

There were 31 soldiers who voted at Valdez Bay, and there were 23 of them who voted for Mr. Sulzer and 7 who voted for Judge Wickersham; and Judge Wickersham wants those soldiers thrown out, which would result in a gain for him of 16 votes, on the theory that these conscripted Alaska boys were not residents of the precincts in which they voted. He concedes that they were residents of Alaska and had been there a year, and had been in the precincts in which they voted 30 days—actually there—but he says that they did not go there to acquire a home, but that they were simply soldiers sojourning there under compulsion, and therefore could not vote.

Let us see what the law is. Section 394 of the act of Congress of May 7, 1906, is as follows:

SEC. 394. All male citizens of the United States 21 years of age and over who are actual and bona fide residents of Alaska and who have been such residents continuously during the entire year immediately preceding the election and who have been such residents continuously for 30 days next preceding the election in the precinct in which they vote shall be qualified to vote for the election of a Delegate from Alaska.

There is no construction which can be made of that section which requires any bona fide residence for the purpose of making a home in the precinct. Now, I will read it again, and I will put in the language which is understood by the word "such."

The CHAIRMAN. What book is that you are reading from?

Mr. GRIGSBY. This is the Code of Alaska; it is section 394——

The CHAIRMAN. Of the congressional act?

Mr. GRIGSBY. Yes; of the congressional act of 1906, the one upon which Judge Wickersham relies to throw out these votes.

All male citizens of the United States 21 years of age and over who are actual and bona fide residents of Alaska, and who have been such (actual and bona fide) residents (of Alaska) continuously during the entire year immediately preceding the election and who have been such (actual and bona fide) residents (of Alaska) continuously for 30 days next preceding the election in the precinct in which they vote—

Is that not what it says? Now, what is the reason for it? Judge Wickersham smiles. Let him take this section and construe it in some other way, on the language alone. But the intention of Congress was that the voting public up there should have the right to vote; and at the time this act was passed it provided for the election in August. And the majority of the population in Alaska was a mining population; and the mining population was out at their mines; and this act was passed in order to enable them to vote in the precinct in which they had been for 30 days. That was the purpose of it, and that is what it says. And I defy Judge Wickersham to read it in any other way. "Who have been such residents." That means the only kind of residents that had been described—"actual and bona fide residents of Alaska."

Mr. WICKERSHAM. Your view, then, is that you can vote in any precinct in the Territory, if you have been an actual and bona fide resident of the Territory for one year?

Mr. GRIGSBY. If you have been in the precinct 30 days; yes. That is what the statute says, and what the statute intends. It does not make any difference if you have a home in Juneau and do not give it up, that statute gives you a voting residence in that precinct that you have been in 30 days; and it was written for the purpose of doing just that thing. And it may even give you two voting precincts. If the law says that a man can vote in two precincts, he can vote in either of the two precincts.

Mr. O'CONNOR. But that section prescribes that he shall have resided there 30 days next preceding the election?

Mr. GRIGSBY. Yes.

Mr. O'CONNOR. So that prevents him from having any two voting places?

Mr. GRIGSBY. This law says a man who has been a bona fide resident of Alaska for one year, and has resided in the precinct in which he offers to vote 30 days continuously preceding the election. That is what it says. Now, that is not a strained construction; it is the only construction. Here is the contestant trying to read something into the statute that is not there, in order to disfranchise 30 soldiers who enlisted in the Army during the war to fight for their country.

Mr. WICKERSHAM. Well, they did not do that, did they?

Mr. GRIGSBY. Well, they were drafted; they were drafted in the Army. It would be bad enough to raise the point at all, but to raise it when there is nothing in it is certainly reprehensible.

Now, those are 23 of the seventy-odd soldiers that Mr. Wickersham wants thrown out. The others I have discussed.

Now, I want to read you some authorities on this proposition of soldier voting in general. Here is the proposition I announce, as is supported by the authorities which I have read and which I will read: There is no law that will prevent a soldier in Alaska acquiring a residence in Alaska, even though he be sent there under orders of the commanding officer, and even though he be subject to removal at any time.

In the case in re Cunningham et al., the constitutional provision was:

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States.

That is the usual constitutional provision.

This provision of the Constitution is aimed at the participation of an unconcerned body of men in the control through the ballot box of municipal affairs, in whose further conduct they have no interest, and from the mismanagement of which, by the officers their ballots might elect, they sustain no injury. If the effect is not to disqualify such persons from gaining or losing a residence, but renders the facts of sojourn or absence important as evidence either to create or destroy it; in other words, presence or absence has primarily no effect upon the political status of such person. The question in the case is still as it was before the adoption of this provision of the Constitution, one of domicile or residence, to be decided upon by the circumstances of the case (citing *Silvey v. Lindsey*, 13 N. E., 444). The soldier must acquire a residence in the new locality. His calling the place his home or believing it to be his home, does not make it legally such. It is not his view of the fact that governs. The facts themselves govern the question. Mere intention is not alone sufficient. It must exist, but must agree with and be manifested by resulting acts which are independent of the presence of the soldier in the new locality. It appears from the evidence produced on the part of the applicants that they have resided outside of the military reservation, but within the State and ward No. 6 of the city of Plattsburg during the year last past. * * * I think the proof sufficient to establish a residence in this ward for over a year last past, and, therefore, order that the Board of Inspectors convene and place the names of the applicants on the register list as provided by law, and that an order may be entered accordingly.

Now, in re Green, 5 Fed., page 145:

It is not doubted that a sailor or soldier of the United States can acquire a residence while in the service. He may purchase or rent a dwelling and so gain a residence, as was the case in *Eames v. Duryea*, 6 Lansing, page 155, and doubtless in other ways.

All these soldiers purchased or rented dwellings and married, most of them. Noaks testifies, page 370, that seven of the Signal Corps boys stationed at Valdez in the year 1918 married Valdez girls and owned their own homes. Isn't that an intention to acquire a home, when you get married? They owned their own homes and lived in them, 7 of them. And there were only 14 voted in Valdez. All this hullaboo that has been raised about this soldier vote and Mr. Wickersham going up there and being prevented by force of arms and thugs from taking depositions is a hoax, designed as the rest of the case was to come down here and slip into Congress when there is nobody here to fight him. He never could get by any committee in the world with it if it was defended.

Now, here are seven of these boys married Valdez girls and owned their homes and lived in them and the others lived in rented houses.

That is the undisputed evidence in this case, that of the whole 15, 7 of them were married and owned their own homes and the others lived in rented houses. And here is your authority, the Pennsylvania case admitted 10 votes. It says they consisted of soldiers who either reenlisted or had been in the precinct many years, or have homes owned or rented homes, the same as this case.

Mr. CHINDBLOM. Does it appear in the record whether the Government had barracks for them?

Mr. GRIGSBY. No; they did not; none of these soldiers lived in barracks. None of the Signal Corps soldiers in Alaska lived in barracks.

Mr. WICKERSHAM. They are all supported the same as they are everywhere else.

Mr. GRIGSBY. They don't live on a military reservation. If they rent a house, they pay rent for it.

Mr. ELLIOTT. The Government allows them commutation of quarters.

Mr. GRIGSBY. That is all right so far as commutation is concerned. When a man buys a house the Government doesn't pay for it.

Mr. O'CONNOR. But Mr. Chindblom's question as I understood it was, is there a reservation there in which they may live, and not in a rented house?

Mr. GRIGSBY. No; there is not. The Signal Corps men in some of the remote precincts live in the station.

Mr. HUDSPETH. How does the Government pay them, a monthly salary, a yearly salary, or by the day?

Mr. GRIGSBY. A monthly salary. I don't know much about how they are paid.

Mr. CHINDBLOM. What do you mean by "living in stations?"

Mr. GRIGSBY. Well, these fellows that live up at Copper Center, so far as I know, bunk in a room off the telegraph station.

Mr. WICKERSHAM. There is a reservation at every one of those places. There are Government buildings there where they live.

Mr. GRIGSBY. Yes; and being on a reservation doesn't disqualify them from voting; and if they did vote, most of them—they all testified they voted for you, and the others refused to answer—and if you deduct their votes you don't gain anything by it. Now, you just confine it specifically to each soldier and see if I am not right. I want the committee to study this evidence. I do not care how many soldiers there were who voted in Alaska. I am accused of not taking the depositions of any of them. There are members of this Signal Corps who have been stationed at Nome, where Mr. Wickersham carried the town overwhelmingly. I suppose they voted up there, and voted for him. Why didn't he take their depositions? It is not in the record that they did not vote. He goes and gets a list of 40 soldiers that he imagines voted for Mr. Sulzer, or pretends to imagine voted for Mr. Sulzer, and takes the depositions of 23 of them, and we have discussed that. Then there are nine that refused to answer. Nine refused to answer last May when he had no authority to make them answer. They assembled them in Valdez on August 30, last year—1919—and he took the deposition of one of them, and that fellow swore he voted for Wickersham. Then he quit. He is the man that is raising the question of this soldier vote: I am not

raising it. It was not incumbent upon me to take any depositions if I did not want to; but when he attacks the vote it is incumbent upon him to take them, and he didn't do it. And why? He takes the deposition of Mr. Tyler, the very first boy you put on the stand, and Tyler swears positively that he voted for Wickersham.

Then he put Mrs. Tyler on the stand, and she refused to disclose for whom she voted, on the ground that she was a legal resident, having lived in the Territory continuously for five years prior to election day, although she married Mr. Tyler on the 1st of November, which did not, as Mr. Wickersham claims, end her residence at all, and he admits he has been unable to find any authority to show that it did; and she stood on her rights; and she was in a family way, according to the evidence in this case, and was advised by her father not to attend the hearing, but to get a doctor's certificate to excuse her from the hearing, and she was put on the stand and kept there for a long time and finally told by Mr. Wickersham that she would be kept there from day to day, or words to that effect, until she testified for whom she voted. She had engaged passage to go out the next day. Then the attorneys got into a row in her presence, when she was there in that condition, and roasted each other. Mr. Diamond said that Mr. Wickersham was a menace to civilization, or something of that kind, in Alaska, and I don't know what Mr. Wickersham said, but anyhow this woman had to sit there and endure all this. Then the undisputed evidence shows that she went home and fell over on the bed and had hysterics, and her brother was there, and she claims that she had been mistreated, and in a way he thought she had been, and he and the old man Selby, who is a newspaper editor there, had a discussion as to which one of them would go out and lick Wickersham, and they both wanted to do it, but the boy says, "You keep out of this; I'll attend to this." And he did. He deliberately walked down the street and encountered Wickersham. His father went along with him and they had a fight, and according to all the testimony about that fight Mr. Wickersham did very well considering that he was matched with a much younger man, and probably was not in as good condition, and if Mr. Wickersham wants to make any capital out of that defeat and is trying to turn it into a victory down here, I would feel very sorry for him for having been beat up by this soldier, but when he comes down here—now this is one soldier that licked Wickersham; it didn't take a whole army. They call him "Fighting Jim" up in Alaska, and that is his reputation, but it didn't take a whole bunch and the fact is this boy was not a member of the Signal Corps; this boy had been over in France for 18 months in the American Expeditionary Forces as an artilleryman. He had no connection with the Signal Corps and there is no evidence in the record that the Signal Corps had any connection—had anything to do or knew anything about this fight.

Mr. ELLIOTT. You will have to admit one thing, though, that this fellow was in practice.

Mr. GRIGSBY. Yes. Well, old man Selby said Mr. Wickersham put up a pretty good fight.

Mr. WICKERSHAM. He ought to know; he is the man that knocked me off the sidewalk.

Mr. GRIGSBY. The old man?

Mr. WICKERSHAM. Yes.

Mr. GRIGSBY. Now let's see what you said about that in your sworn testimony. Just remember that. I think you can all remember that statement, that Mr. Selby, the old man, knocked him off the sidewalk. You see, as Mr. Wickersham thinks over this thing he adds details. He told you the other night that a whole bunch attacked him; that he was mobbed. Now, I will read this first and tell you what he reminds me of afterwards.

Mr. CHINDBLOM. What page are you reading from?

Mr. GRIGSBY. Here is the testimony, page 231, at the bottom of the page, where he commences the details of the fight. Mr. Dimond had just denied that he had anything to do with it, with what Mr. Wickersham accused him of the other night and accused him of then. Mr. Wickersham, in response to Mr. Dimond, said:

I am glad you made that statement, because I certainly would have done you an injustice if you had not; I can't deny it, because I couldn't see well enough to know who the men were.

Now, if he couldn't see well enough to know who they were, why does he tell you gentlemen it was Dimond?

Mr. WICKERSHAM. I did not say it was Dimond.

Mr. GRIGSBY. You told these men the other night that Dimond ribbed this whole thing up, and you knew it, because he was right there with them. Now, you say you can't deny it, because you couldn't see well enough to know who the men were. [Reading:]

Anyway, when I got there this young big fellow stopped me. I was on the outside of the sidewalk; he and the other man, whom I did not know but who I have since learned to be the Selbys, were on the inside, next to the center of the sidewalk. The young fellow said to me, "You have insulted my sister over there in that examination; she is over here crying now." I said, "No, I haven't insulted your sister in any way;" and he repeated it—"Yes, you insulted her; she is over here crying now, and I am going to beat you up."

Mr. DIMOND. We object to this as incompetent, irrelevant, and immaterial, and having no bearing upon the question as to who was elected in the 1918 election.

Mr. WICKERSHAM. No; but it has a good deal of bearing on the matter of the depositions.

He is trying to show by this testimony that it prevented him from taking depositions. [Reading:]

I can not testify about that last statement, whether he said he was going to beat me up or mash my face—it was an expression of that kind, which notified me of an immediate assault, and the assault was made on me so quickly that I don't remember what the expression was, for that reason, among others. He immediately struck me—struck at me—but I was standing with my face square to him and I could see him with my left eye. My left eye is pretty good; I am totally blind in the right eye; but I can see two-thirds, at least, good with my left eye, and I warded off his blows, but he kept striking at me, and the older man, who stood alongside of me on the right and whom I didn't know and couldn't even see, said, "Hit him, Tom; kill him; kill the ——." Well, Tom did his best, and between them they pushed me off the sidewalk. When I went off the sidewalk, rather backward and on my left side, it turned me half around and presented my right side entirely to them, and, being totally blind on that side, I couldn't defend myself, and one or both of them—I don't know whether the old man struck me or not, because I couldn't see, but I was struck very vigorously several times on the right side of my head. They knocked out the last big molar tooth in my lower jaw and smashed my ear and my face all up on that side. I think the jaw is broken, but Dr. Silverman says not, but it is so badly bruised and swollen and in such bad shape that although we took an X ray of it we couldn't tell anything about it; but I am suffering great pain with it now and have ever since. One of these blows on my right side, on my blind side, knocked me down, and I got up finally; I think I was kicked while

I was down; I have got a very bad spot here on my lower right jaw [indicating], which I can't remember anybody to have struck when I was up; but I am not sure about that.

Mr. DIMOND. I desire the record to show that I object to all of this testimony—there is no use interrupting at every stage of it—to anything that occurred outside of this room.

The WITNESS (continuing). I finally came to and got up, and as I got up there was a man standing in front of me with a dark coat on, whom I didn't know, but I have since been told it was Mr. Casler, the deputy marshal, who had been somewhere in the neighborhood and had seen the fight and came over. He waved his hand and said that will do, or some form of that kind, and stopped it. Even then the older of these two men was dancing around and calling me a ——— and trying to strike me, but the younger man took him by the arm and pushed him back and wouldn't let him do it.

I went to my hotel soon after that and sent for Dr. Silverman, and have been in bed most of the time since. My blind eye has been very badly injured and my face and jaw are very seriously injured and I have suffered very great pain, and consequently I have not been able to attend to the taking of my depositions in this matter during those days. I have 40 days to take the testimony in the Territory, but for those days since Saturday I have been in bed and not able to do anything.

When I came here to take these depositions I was told by my attorneys and by a great many of my friends in the town that there was a feeling of enmity here to me on the part of these Signal Corps men and their friends that had been worked up and I had better not undertake to take their testimony. I talked it over with my attorneys and they thought finally it would be all right to take them—it would come around all right—but since that even my attorney has advised me very strongly against it, and I have not undertaken to take the testimony of these Signal Corps men and Army men here since Mr. Tyler's going on the stand, because it is the fear of my friends that I may be killed if I undertake it.

Certainly Mr. Selby's earnest efforts to get his son to kill me arose from the fact of the taking of the deposition of Tyler and his wife, and from that alone, I never saw or knew Mr. Selby or the young Mr. Selby before in my life. I suppose I may have seen the father, I don't remember. But Mrs. Tyler is the daughter of Mr. Selby, and I am informed a sister of the man who commenced this assault on me. I didn't insult her in any way, as the record shows, and I am informed, Mr. Dimond, that you have said so.

Mr. DIMOND. No.

Mr. WICKERSHAM. You haven't said so; the record shows, however, that I did not; I tried to get her to tell the facts, and she declined to do it, and she then left the Territory, but with my consent, although she didn't finish her testimony and tell whom she voted for. Mr. Tyler went out with her. Neither one signed their depositions, although their attorney has consented that their depositions may stand as their depositions without their signing them.

There are many things in connection with the taking of these depositions of the soldiers here that lead me to believe that they are very much incensed at me, and I seem to stand in about the same relation to them that an internal-revenue officer does in the South to a lot of moonshiners. I want them to tell the truth about whom they voted for, and for two elections they have now evaded it under the instructions of their attorneys, the Democratic organization, and I get beaten up on the public streets, although I am 62 years of age and blind, by the bunch when I undertake it, and I am not inclined to go any further with the taking of their depositions at this time.

He talks about these soldiers that would not give their depositions and accuses them of beating him up on the public streets, when the evidence shows they had nothing to do with it, and now he says there is a whole bunch and he couldn't tell whether there was a dozen or 24 from his statement the other night. He reminds me of a well-known character in Shakespeare, Sir John Falstaff. Some of you remember that when he and some of his companions committed a highway robbery, while they were committing the robbery Prince Henry and a friend of his hid behind a corner, and after Sir John Falstaff and his gang had gotten the other fellow's bond, Prince

Henry and his friends went out and beat them up and drove them off. They were in disguise. Prince Henry and his friends, and they beat it down to the tavern and were there when Falstaff and his friends came in. Then Falstaff described the encounter, and he starts out by telling how he was attacked by two men in buckram, and as he got warmed up over the description of it he raised the two to four men in buckram, and from four to seven, and from seven to eleven, and so on up until finally the Prince says, "Oh, you lying scoundrel; that was me and Poins here attacked you, just the two of us."

I would like to put it in the record, gentlemen, if it would not encumber the record, but it shows the same disposition to exaggerate, and if Mr. Wickersham would exaggerate about the number of men that attacked him and raise it from one to the whole bunch of Signal Corps officers, I begin to require testimony to show that he was so badly injured, and don't feel so sorry for him. He is coming down here to Congress, I have been told that the Democratic organization is accused in this record by Mr. Wickersham of not letting him get his testimony when he went up there to Valdez and found that the testimony was not going to help him. He took the position that he could not get it; that there was a conspiracy there, a machine which had existed for years past, headed by a man by the name of Noaks, and that of course fell right in line with his theory that they mobbed him and threatened to kill him, so that he had to leave the country, but the two—now, he has made three statements about why he did not take those depositions. The first is that he was afraid that he would be severely injured, if not killed, if he proceeded to take any more depositions, and the second reason he gives is that his attorney advised him that these Signal Corps men were in a conspiracy to go on the stand and perjure themselves, and will swear that they voted for Wickersham, and that he is satisfied that they are going to do that, and that therefore he don't call them. The next reason he gives, which is inconsistent with both of the others, is that the War Department fell down on him; the Secretary of War and the War Department did not assemble the Signal Corps men in time; that he did not get any notice of their being assembled until the 30th day of August, and he only had seven days more to take depositions, and he had to go out to Anchorage. Now, look what he says here in this testimony about that.

The Tyler deposition was taken, record page 208, on the 23d of August. That is 14 days before the time for his taking testimony expires.

MR. O'CONNOR. Will you permit an interruption there, Mr. Grigsby?

MR. GRIGSBY. Yes, sir.

MR. O'CONNOR. How much further have you to go? I am not finding fault with what time you take, but I was just thinking of taking a recess.

MR. GRIGSBY. I will just finish this quotation, then. On the 23d of August, when this row came up with Mrs. Tyer:

MR. WICKERSHAM. I want her to testify to the truth, and the whole truth, as she said she would.

Mrs. TYLER. Why are you keeping my husband?

Mr. WICKERSHAM. Your husband is being kept because of the resolution of the House of Representatives, which requires the assembly of all these soldiers here for the purpose of testifying.

That is on the 23d of August, and at that time he was kept by the major in command, on account of that resolution, until Mr. Wickersham consented to excuse him. And the rest of the soldiers were there under subpœna—I will withdraw that; I don't know whether they were under subpœna or not, but they could have been—but the reference to them is as being kept there in the same way. Anyway, they were there, so there wasn't anything in this statement of his about not having time to take it, and there is nothing in his statement, no evidence except his own, to indicate that he was in any danger from any Signal Corps man.

Now, there isn't a more gentlemanly, finer class of boys anywhere in the world than those Signal Corps boys in Alaska, and it is so testified to in this record. They not only would not conspire to rob anybody, they would not conspire to commit perjury. For you to adopt Mr. Wickersham's theory and count these votes of the boys whose depositions he did not take, you have got to have some excuse for him not taking the depositions. Are you going to take it as an excuse that he is correct in the accusation that these men have conspired to go on the stand and commit perjury? Is it reasonable that boys who married girls and lived in the town of Valdez will get on the stand and commit perjury in a case in which they have no interest? Now, he talks about the Democratic organizations having anything to do with them.

Why, if there is any class of people in the world who are free from the domination of political influence and whose positions can not be affected by it, it certainly is the men in the Army. They are certainly independent and have a right to follow their own inclinations and opinions in political matters. They don't owe their positions to any party organizations, and they can't be removed from their positions by any party organization. Why would they go on the stand in conspiracy and make perjurers out of themselves over this contest? Now, I say that is no excuse for his not taking the depositions. There isn't any evidence that he was in any danger. That is all bosh. None of them touched him. The encounter that he did get into was accounted for in another way. It was just an excuse that he comes down here with for not taking this testimony, so that he could get you to receive other evidence which is of a very doubtful character, which tends to show that he thinks that some of these men voted for Sulzer. Now, what is this evidence? The 76 of them voted in the Democratic primary. It is in evidence in the Democratic primaries in Valdez in April, 1918, there were more votes cast than were cast at the election in the fall, and a primary vote ordinarily is never as big as the vote at the general election. In Valdez it was more. Why? Because, as I have stated, and as the evidence shows, the Wickites put up a man in the Democratic primaries and went in and voted for him, and that is in the record, and you have 186 votes in the Democratic primaries in Valdez, and 180 ballots cast in the general election more votes at the primaries than at the election. And in the Republican primaries there are only about 20 votes cast.

Now, that shows how much participation there was by Republicans in the election outside of those that voted in the Democratic pri-

mary. So that evidence is absolutely valueless as to how these boys voted. If you should conclude that any of them are not legal voters, I contend all of them were legal voters. They were married, some of them owned their own homes, and others lived in rented houses, and they come within the qualifications for voters.

Now, what is the rest of his evidence? He puts his own attorney on the stand, and his own attorney says what is the general talk around, conversation, reputation. Now, reputation evidence is weak, but you have got to prove it first by somebody that is disinterested or it is all the weaker. Now, he takes the weakest class of evidence, of proof, and furnishes the evidence of it from the weakest class of witnesses. And we have got evidence to the contrary.

Now, Mr. O'Connor, did you desire to make a motion?

Mr. O'CONNOR. Before we recess, Mr. Chairman, let me ask one question. I want to get one point that is not very clear in my mind.

As I understand your recital of the law with reference to suffrage in Alaska, is that you must be a bona fide resident for at least one year in Alaska and a resident of the precinct for 30 days prior to the election.

Mr. GRIGSBY. It doesn't say you have to be a resident of the precinct prior to election; it says you must be a bona fide resident of the Territory, for a year in the precinct.

Mr. O'CONNOR. The point I had in mind was this: Do you hold that under the statute also a soldier that has been in Alaska for six months can vote?

Mr. GRIGSBY. No, sir.

Mr. O'CONNOR. Well; what was the six months' provision?

Mr. GRIGSBY. The six months' provision is the general territorial act, revised in 1906, when Congress permitted all Territories hereafter organized to fix the qualifications of the voters at all elections after the first one, provided there were certain limitations. One of them was that the voter must be a citizen; another was that if he was a soldier or sailor, a mariner or a person in the service of the United States, or the Army or Navy, attached to troops of the United States, he should not be allowed to vote in any Territory until he had been domiciled in the Territory for at least six months.

Mr. O'CONNOR. Would you hold that notwithstanding that general qualification of one year bona fide residence in Alaska, that a soldier could be there for six months and then vote?

Mr. GRIGSBY. No, sir.

Mr. O'CONNOR. You don't hold that?

Mr. GRIGSBY. No, sir; I certainly admit that a man to vote in Alaska must be a bona fide resident of Alaska for a year.

Mr. O'CONNOR. Even though he is a soldier?

Mr. GRIGSBY. Yes, sir.

Mr. O'CONNOR. But you do hold that a man could go there as a soldier from Ohio or Louisiana and remain there a year and marry, and by that fact establish to your satisfaction his right to vote?

Mr. GRIGSBY. Yes, sir; and there are a great many other ways.

The CHAIRMAN. We will take a recess now until 2 o'clock this afternoon.

(Whereupon at 12.20 o'clock p. m., the committee recessed until 2 o'clock p. m. this day.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF HON. GEORGE B. GRIGSBY.—Continued.

Mr. GRIGSBY. Mr. Chairman, Mr. Wickersham the other day read from the case of *Delano v. Morgan*, on the proposition of how far the committee could go in receiving circumstantial evidence as to how a person had voted without putting the voter on the stand. That case which he cited, *Delano v. Morgan*, is an Ohio case reported in contested election cases, second session, Forty-first Congress, House miscellaneous documents 1865 to 1870. The opinion in that case states as follows.

For whom a vote is given, by the laws of Ohio, is a secret properly known only to the voter himself, and he is never required to disclose it. This fact must therefore be often determined upon circumstantial evidence alone.

The same rule obtained in the celebrated case from New Jersey known as the Broad Seal Case. In the Broad Seal Case, from New Jersey, in the opinion the committee says:

Although in numerous instances the voter, being examined as a witness, voluntarily discloses the character of his vote, yet, in many cases, he either did not appear, or, appearing, chose to avail himself of his legal right to refuse an answer on that point. In such cases the proof of general reputation as to the political character of the voter, and as to the party to which he belonged at the time of the election, has been considered sufficiently demonstrative of the complexion of his vote. Where no such proof was adduced on either side proof of the declarations of the voter has been received. The date and all the circumstances of such declarations being considered as connecting themselves with the questions of credibility and sufficiency. In every instance where the proof under all the circumstances was not sufficient to produce conviction the vote has been left unappropriated.

That bears out what I said the other day; that is, the rule is that the evidence must be convincing.

Now, I want to read a few extracts from the testimony in the record of some of those soldiers. The evidence in this case with reference to these soldiers shows that the Signal Corps men have always been in the habit of voting in Alaska. The testimony of Mr. Wickersham's attorney is to that effect as to these Signal Corps men voting at Valdez in 1916 and previously.

Mr. WICKERSHAM. I did not testify to it. I did not know it.

Mr. GRIGSBY. Then, he did not know it, or testifies that he did not know it, but his lawyer knew it, and he took no depositions in Valdez. He criticises me because I did not take the depositions of any Signal Corps men, and I have answered that I am not attacking the vote of the Signal Corps men, which is sufficient excuse for my not taking their depositions.

But back in 1916 he was attacking the votes of the soldiers at Fort Gibbon, where his opponent had carried the precinct by a large majority, and he took the depositions of one or two at Fairbanks, or attempted to do so; but in Valdez, which, up to that time was a precinct that Mr. Wickersham had always carried, and which was the headquarters of the Signal Corps outfit, and where he claimed that the Democratic machine controlled them, he took no depositions, and

neither did Mr. Sulzer. Why was that? Here is the reason why: The most interesting evidence in this connection is that of E. E. Ritchie, Mr. Wickersham's attorney in this case, contained on page 215 of the record. On cross-examination Mr. Ritchie testified as follows:

Q. I think you said in the year 1918 the Signal Corps boys nearly all, so far as you are aware, intended to vote for Mr. Sulzer, or you had received information that they probably would vote for Mr. Sulzer, and that such had not been the case theretofore in the preceding elections. Now, in that connection, is it not a fact that the Signal Corps boys who have lived here in the town of Valdez have voted in all of the elections since and including 1912?—A. I think they have.

Q. And prior to the year 1918 a great many of them, probably a majority, were generally known as supporters of Wickersham, were they not?—A. Up to and including 1914 they were. I think in 1916 they were divided somewhere near half and half.

Q. In 1914 it was generally understood that nearly all of them supported Judge Wickersham.—A. I think all except three or four.

Q. These men while they lived in the Army had lived in the town of Valdez; that is, they don't live at any military post?—A. Those in civilian employment live here in town; that is, the Signal Corps operators and the Quartermaster's employees live in town.

Q. And a number of them are married and have their wives here and have their homes here. That is true?—A. Yes, sir.

Q. And they don't live at any military barracks or upon any military reservation?—A. They don't live together.

Q. As soldiers?—A. No.

Q. Did you ever know of any objection being made to their voting prior to the year 1916 by anybody?—A. I have no recollection of any.

Q. And you keep pretty good track of political matters here and if there had been any serious protest you would probably have known of it?—A. I think so.

Then Mr. Ritchie makes this voluntary statement:

Mr. Ritchie. I want to make an additional statement. Although I have been familiar for a great many years with the law that an enlisted soldier around a military barracks or one even claiming a residence outside of the barracks as long as he was merely stationed at a military post, could not vote, I was under the impression until 1912, or perhaps a little after, that a soldier in civilian employment, like these Signal Corps men, had a right to vote if he was not on a reservation but I was told by a lawyer here in the campaign in 1912, or a little bit after, that I was mistaken about that, and I looked it up and ascertained the fact that they were on the same basis, so far as their residence is concerned under the law, as any other soldier, but I never objected to their voting for the reason that I thought it was not good policy, although for several years they were voting, many of them, against the way I was.

Q. At this time you opposed Wickersham?—A. Yes; I opposed Wickersham in three elections, and in at least two of these elections nearly all the Signal Corps boys were voting for him and I didn't object although I believed at the time that their votes were illegal, but I didn't think it good policy to object to their voting.

Q. As a matter of fact you never knew of anybody making any objection?—A. I have no recollection of any. I think myself almost everybody was of the opinion they had a right to vote.

Now, it is in evidence, according to the testimony of Shutts, that he got into the habit of voting on account of advice given by Mr. Wickersham and that other soldiers repeated to him. There is the affidavit of Odle, which is in evidence, or, rather, I do not claim that it is in evidence. I put it in my brief and, perhaps, I should not have done it, but Mr. Wickersham has contradicted it and waived the impropriety. He has waived the impropriety of my putting it in my brief by producing an affidavit in rebuttal. I am willing that the committee shall take the affidavits—that is, the affidavit of Shutts,

which was quoted from in the hearings in this case, the affidavit of Odle, and the affidavit of Mr. Wickersham, and decide who is telling the truth. I do not comment on it; but all of the evidence in this case, including the affidavits and testimony of Noaks and Ritchie, is to the effect that these men voted on account of advice that came from Judge Wickersham in the first place. The real point is that they have all been voting since and including 1912, and voting at elections is an indication or act evidencing residence.

When a man votes at successive elections it is as much or more evidence of residence than mere inhabitancy, which the Senate held was enough in the case of Gen. Ames. They had been living in rented houses, or houses which they owned, were married to Valdez girls, were living separate and apart from the military reservation, and had voted in previous elections. The men were selective-service men, and most of them had been transferred to Alaska at their own request. That is the situation with regard to the Signal Corps vote at Valdez. Some mention was made of the fact that some of the men in the outlying sections lived in the station. Now, if they had lived in the station, and if the station is on the military reservation, that does not make any difference as to their right to vote—that is, living on a military reservation or otherwise if they become residents, because the authorities hold that living on a military reservation in a Territory is not a disqualification, whereas it is in the States. On that subject I will read from the case of *Burleigh v. Armstrong*, Rowell's Contested Election Cases, 278:

But with regard to the election held within the military reservations of Fort Sully and Fort Randall (or the Ellis precinct), the committee have reached the conclusion that there is nothing in the terms of the organic act nor in the general policy of the law forbidding an election to be held at such places. The contestants have insisted that the rule which disqualifies persons from voting within any State who reside within forts or other territory to which the title and jurisdiction has been ceded by the State to the Federal Government applies to the military reservations which have been designated by the Executive within the territories belonging to the United States. But forasmuch as there is no conflict of sovereignty between the Government and the Territory, and the latter holds all its jurisdiction in subordination to the controlling power of Congress, and the military reservations are not permanently severed from the body of the public lands but are simply set apart and withheld from private ownership by an Executive order to the Commissioner of the Land Office, and may be, and often are, restored to the common stock of the public domain when the occasion for their temporary occupancy has ceased, at the pleasure of Congress, and which requires no concurrent act of any State authority to give it efficacy, the residents upon such reservations, although abiding thereon by the mere sufferance of the United States authorities, do not in any just sense cease to be inhabitants or residents of the Territory within which such military reservation may be situated.

That is the decision of the House of Representatives on that proposition; so that if a soldier is otherwise qualified, the mere fact that he lives on a military reservation in the Territory of Alaska does not disqualify him from voting.

I am not going to read all the authorities I have cited in my brief. The extracts from the authorities are in here, and I expect the committee will save time by examining them after it takes this case under consideration.

Now, as to the vote of Max Faust. Capt. Faust testified that he has been a soldier in the United States Army for 20 years; that he was ordered to Alaska in 1903; that he left Alaska July 25, 1919, being

ordered to Camp Lewis for discharge from the United States Army; and that he was a member of the United States Signal Corps during his entire residence in Alaska. His original enlistment was in New York City; and he also enlisted in Alaska. He made this statement:

I wish to make the statement that I enlisted in Alaska, was appointed in Alaska, my family resides in Alaska, and I claim Alaska as my residence.

He was in the Alaska service from 1903 to 1919, or for 15 years, and he was a man who reenlisted a great many times. I will not read all of the testimony, but I will ask the committee to do that.

Capt. Max Faust, who was accused of having taken part in the suppression of evidence in the 1916 election, testified as follows, at page 75 of the record in this case:

Q. Now, we tried to get testimony taken in Fairbanks two years ago in the other contest; you had a great deal to do with that?—A. Absolutely nothing.

Q. The boys from there testified that they refused to testify, because they had instructions from their superior officer, Lieut. M. H. Faust, not to testify.—

A. I think Judge Wickersham is entirely mistaken on that.

(Judge Wickersham is examining the witness.)

Q. I was not there. I am referring to the record.—A. I am referring to the records, too; and you have made this statement, or your representatives have made this statement, that my men refused to testify because they were acting under orders from their superior officer, which is absolutely false. The men at Fairbanks, Alaska, telegraphed to me and told me that they were subpoenaed to give testimony in a contest, and requested information as to whether or not they were required to appear. I answered them and told them that I had no jurisdiction in the matter whatsoever, and suggested that they consult the district attorney as to what they had to do and what they didn't have to do and be guided entirely by his views. Further than that I had absolutely nothing to do with the matter.

Q. And you think they did that?—A. I don't know.

That is what the evidence shows as to any participation by Faust.

Now, with reference to the residence of these Valdez soldiers, I want to read a small portion of the testimony of Noaks. Noaks is the man whom Mr. Wickersham accuses of being the head of the soldiers' Democratic machine in both 1916 and 1918:

Q. Now, were the members of the Signal Corps at Valdez in 1918 residing on a Government reservation?—A. They were not.

Q. Where did they reside?—A. In their own homes in the town—the married ones—and the others in other people's homes as boarders or roomers.

Q. They resided as other citizens of Valdez?—A. With and as other citizens resided.

Q. Do you know whether the members of the Signal Corps paid taxes on their property like other citizens there?—A. I know they did.

Q. Did any of the members of the Signal Corps take part in the municipal elections that were held in the town of Valdez in the spring of 1918?—A. They did.

Q. Was there any difference in their method of living in Valdez from the way other citizens lived?—A. There was not. They were earning their living, associating with other citizens of the town and willing to be such.

Q. And they made personal friends among those living in Valdez?—A. They did.

Q. Do you remember how many Signal Corps boys stationed at Valdez for the year 1918 married Valdez girls and young ladies who had lived in Valdez?—A. About seven.

Q. Do you know that those that married owned their own homes in Valdez?—A. Some did.

Q. Did they live in them?—A. They did.

Q. And others, how did they live?—A. They rented houses.

There is no distinction between renting a house and living in a house you own, so far as residence is concerned, and I want to read this extract from one of the cases in that connection:

The general proposition that the presence of the Army in a particular locality is not of its own volition and is presumably only temporary, is probably subject to the qualification that the actual residence of members of the Army in a given locality may be of such fixed and permanent character as to exclude altogether the idea of domicile or residence in any other locality, and to the further qualification that though one in the military service is subject to the orders of superior officers the circumstances may be such that he remains so far *sui juris* as to matters not involved in his military duties that he may, if he so desires, change his domicile or establish it at any place he sees fit. Thus, it is apparent that there is no hard and fast rule governing all cases. (Ex parte White, 228 Fed., p. 88.)

I have cited to you other cases along this same line.

In the hearings before this committee Mr. Wickersham stated in effect:

Then we can not trust the telegraph lines any longer. But the fact is that they (the Signal Corps men) are formed into a political organization and they control the men all along that line in the use of the telegraph system so that every one of them votes the same way. They all have an organization, and they all get paid for it. I do not use "paid" there in the sense that money is handed out to them, but in this case a man by the name of Noaks at Valdez, where the cables come to the shore and through which the telegrams for the Territory are scattered out, was the strong influential man among the boys, and some 18 or 20 of them at the station had Noaks to run the political organization there for 1916-1918, and immediately after the 1918 elections he was appointed to an office by the judge at that place. The Democratic judge there appointed him to the office of commissioner and a commissioner makes him justice of the peace, probate judge, recorder, and gives him all the rest of the power that is given to a commissioner, and Mr. Noaks now sits there as a commissioner in court over a precinct, although he is not a voter in the Territory of Alaska, because of his voting all these men at the election.

Judge Wickersham made that statement in July, 1919, before this committee. He had a resolution and the aid of the War Department and a good chance to take the deposition of this soldier. This soldier's deposition was taken by myself, through my attorney. This statement was quoted to the soldier, Noaks, and he was asked:

Q. I ask you if that statement is true?—A. It is absolutely false.

Q. Where were you in 1916, at the time the election was held, on the 7th day of November, 1916, at which a Delegate to Congress was elected?—A. I was at Copper Center.

Q. Did you vote at that election?—A. I did not.

He not only was not at Valdez, as Judge Wickersham stated, at the head of the Democratic machine—he not only was not there at all, but he did not even vote where he was stationed.

Now, Noaks testified something about the political complexion of those boys, as follows:

Q. Did you hear any discussion as to the relative merits of Mr. Wickersham and Mr. Sulzer for Delegate to Congress in the campaign of 1916 at Copper Center?—A. I did.

Q. And in that campaign whom did you favor, if anybody, in any of these discussions?—A. In 1916?

Q. Yes.—A. I favored Mr. Wickersham.

Q. With whom did you have discussions in and about Copper Center during 1916?—A. C. Parker Smith, commissioner; R. Blix, roadhouse man and postmaster; Charles Cowell; James Manken; and Frank Bingham.

Mr. Blix testified for Mr. Wickersham in rebuttal, and could have contradicted Noaks if the latter's testimony was not true.

I read further from the testimony:

Q. Mr. Wickersham has stated, as I just read to you, that you were the political manager for the boys in the Signal Corps for the years 1916-1918. Did you act as political manager for the Signal Corps boys in either of these years?—A. I did not. That statement is absolutely false.

Q. When did you first come to Valdez to take up your home there?—A. February 6, 1917.

Now, this man Noaks went to Alaska in 1911; he arrived in Alaska July 1, 1911, and was stationed at St. Michael. His enlistment expired on April 2, 1914, according to the record, page 369, and his duties were those of a telegraph operator. I read from his testimony, as follows:

Q. What did you do after your discharge in 1914?—A. Worked for the Quartermaster Department as a civilian and also on the San Pedro, which was a dredge at the mouth of the Yukon River.

Q. Then did you later reenlist in the Signal Corps Department?—A. Yes.

Q. When and where?—A. I enlisted August 25, 1914, at Seattle.

Q. How long had you been in Seattle, Wash., when you reenlisted in the Signal Corps of the United States Army?—A. I had arrived about five days previous to that date.

He goes on to say that he had no residence anywhere else than Alaska from 1911 to 1914; that when his term of enlistment expired he went to work on a dredge, then went outside and reenlisted, coming back to the same service—evidently, although he does not directly say so, in order to come back. So that, with the exception of less than a year, he has been in Alaska since 1911, has reenlisted, has studied law, was admitted to the bar, having been examined by Mr. Wickersham's attorney in March, 1919, four months after the election, and was appointed United States commissioner at Cordova. There is testimony explaining how Judge Brown came to appoint him. I will not go to the trouble of reading that, but it is set forth in the brief. The testimony shows that Noaks is clearly a voter.

Now, there was another boy, John Pegues, at Fairbanks, who refused to answer in 1918, and who, for some time prior thereto, I suppose for more than a year, was working on a newspaper there, a Democratic paper. I read from the testimony as follows:

Q. When did you first come to Alaska?—A. June, 1913.

Q. Were you in the service of the United States Army at that time?—A. I was.

Q. Had you been in the service of the United States Army at all times between the date of your said arrival up to and including November 5, 1918?—A. No. My first enlistment ended when I was en route from Fairbanks to Fort Gibbon on September 21, 1915. The boat arrived in Fort Gibbon at least one day after the expiration of my service, and I was not enlisted again until another day, making two days, in order to retain the grade which I held at that time, my second enlistment papers were dated back to meet Army regulations.

Q. How far back were the papers of your reenlistment dated?—A. Twenty-four hours.

Q. Then there was an interval of 24 hours between the date of the expiration of your first service and the date given you in your reenlistment papers?—That is my understanding.

Q. Are you able to state what place you designated as your residence at the time you so reenlisted?—A. I was not asked that for my place of residence, but in request as a married man, for permission to reenlist, I stated in a letter sent through military channels to the Chief Signal Office of the United States Army that my home was in Fairbanks, at which place my family was then residing.

Under the authorities which I read this morning, and which Mr. Wickersham cited, the mere fact of his reenlistment together with having a family there brings him within that Pennsylvania case where the votes were counted under precisely the same circumstances. This man is there, out of the service, and is working on a newspaper. There is no question at all about the legality of this vote.

The gentleman from Texas made the remark the other day that in Texas soldiers can not vote at all.

Mr. HUDSPETH. No, sir; that was a provision in the constitution of my State.

Mr. GRIGSBY. Nor even preachers.

Mr. HUDSPETH. Under our constitution of 1845 a preacher could not hold office in the State of Texas, but the constitution has been amended since.

Mr. GRIGSBY. I want to enliven the proceedings by stating that the original Soviet constitution of Russia provided that no preacher nor lawyer could participate in the Government, and they explained it on this theory, or at least, I am so told by an ex-United States Senator, that a lawyer spends half his life digging into the past and the balance of his life trying to apply what he finds out to the present and lets the future go to hell; that a preacher spends half of his life digging into the past, the balance of his life trying to apply what he finds out to the future and lets the present go to hell. So that naturally both were disqualified. But there is nothing in that theory which would mitigate against a soldier voting, that I can discover.

Mr. O'CONNOR. It was recently said by a celebrated man, in connection with the new order that is to be foisted on the world, that when that great day comes the waters will first flow with the blood of the priesthood—undoubtedly there is no escape for them; second, the doctors—"Praise God from whom all blessings flow"—and, third, the lawyers; they are bound to go, but are made the third selected and not the first.

Mr. GRIGSBY. There were 3 votes I did not discuss this morning, by an oversight, the votes of George Doyle, William Gross, and Walter Wilson. George Doyle testified that he voted for Sulzer and he does not qualify as a resident except by his physical presence as a soldier in the Army. But there is something about the testimony of George Doyle which throws a cloud on it. A portion of the cross-examination of Doyle is as follows:

Q. You have been in Alaska since what year?—A. I was transferred up here in 1915—August 18.

Q. Now, you had been a violent Wickersham supporter up to the time of election, had you not?—A. I had not given either party serious thought.

Q. You were, however, advocating the election of Wickersham, is that not true?—A. I wasn't advocating either one.

Q. Do you know Dr. Freeburger?—A. Yes, sir; I know Dr. Freeburger well—soldiered with him.

Q. You know Mr. Prentiss, don't you?—A. Billy Prentiss?

Q. Yes.—A. Yes, sir.

Q. You knew those men before election day, didn't you?—A. Yes, sir; I instructed both of them up there.

Q. And you advocated the election of Wickersham to them, didn't you, before election day?—A. I don't remember that I did.

Q. You wouldn't say that you did not, would you?—A. I wouldn't say that I didn't or I wouldn't say that I did, because I never gave the election a serious thought. I may at some time have said something offhand.

Q. That Wickersham ought to be elected?—A. Well, I don't just recall what I did say. The strong talk in the company among the fishermen, they were all for Wickersham—the company consisted of mostly fishermen, and they were all for Wickersham.

Q. And that naturally made you lean toward Wickersham?—A. Yes, sir; naturally would—soldiered with them.

Q. And that made you advocate the election of Wickersham as against Mr. Sulzer, is that right?—A. No, sir; that didn't exactly turn me against Mr. Sulzer. What turned me against Mr. Sulzer was his own speech.

Q. His own speech?—A. Yes, sir.

Q. That was a week after election?—A. Yes, sir; approximately a week.

And so on. Now, it develops that this man was in jail when he testified under a charge of receiving stolen goods, whether charged with it or serving a sentence the record does not show. But he was visited in the jail by Mr. Rustgard, or his deposition taken there by Mr. Rustgard. He testifies, however, that Mr. Rustgard called on him without being sent for and it resulted in that deposition. Mr. Rustgard is a Wickersham attorney up there and here is a boy in jail; he calls on him, and probably this boy was mad at the Democratic Federal officials, but on cross-examination he admits practically that he was advocating the election of Wickersham. Now, it does not seem as though a seat in the House should be disturbed on account of testimony given under such circumstances. Doyle swears also that Soldier Gross and Soldier Wilson rode up to the polls in the same conveyance he did, but that he heard no conversation from them as to how they voted, although the general talk in the crowd in a saloon, before any of them went up there, was for Sulzer. So there is only the opinion evidence of Doyle, a man in jail, as to how Gross and Wilson voted, and his own testimony is not any too credible. That is all the comment I have to make on that.

Now, gentlemen, I will come to the question of the voters on the Indian reservations, so-called. Mr. Wickersham mentions the Hydah Reservation, the Klawock Reservation, the Auk Reservation, and the Douglas Reservation. You gentlemen know what the orders are which created the Klawock and Hydah Indian Reservations, as they are called. The orders are very much alike. These reservations are set apart for the use of Indians of certain tribes and such other Indians as choose to join them. There is no inference from the language of the orders that the orders refer to any organized tribe, but they say Indians of the Hydah Tribe and such others as choose to join them, not referring to the tribe as an organized tribe in any sense, but in a descriptive way to identify the race of Indians for whom the reservation is reserved, and they extend the right to any other Indians that want to join them. The legal question in this case simmers down to this, and there are two points: Is this such an Indian reservation that residents thereon would not be residents of the Territory? Are they on a tract of land that is so set apart in the Territory that it is not in the Territory? If they are, then the white men voting, who live on that reservation, would be disqualified. But it is not such a reservation. There is no authority which prevents residence on the reservation being such a residence as entitles a man to vote unless the reservation is set apart from the Territory and can not belong to the future State except by treaty with the Indians.

I have several authorities on that point. One of them is this *Burleigh v. Armstrong* case which I read with regard to military reservations.

The CHAIRMAN. In what authority is that?

Mr. GRIGSBY. That is in Rowell, page 278, the one I just read a while ago.

Mr. CHINDBLOM. Is the effect of that that the beneficial ownership must be in the Indians, so that eventually the land would be allotted to the Indians occupying it or so that they would have some interest or claim in or to the land?

Mr. GRIGSBY. Not necessarily; it could be either that or that it would continue to be reserved from the State to constitute an Indian reservation in the State.

Now, here is the law in South Dakota :

The law organizing the Territory of Dakota provided that the Territory which by treaties with Indian tribes was not to be made part of any State or Territory without the consent of those tribes should not become a part of the Territory until the consent of the tribes was obtained.

It is quite apparent from the terms of this organic act that it was not competent for the authorities of the Territory to hold an election or exercise any other jurisdictional act within any part of the Indian reservation, because by treaty with the Indians that land was not to become a part of any State or Territory without their consent, so that it would require affirmative congressional action, besides a treaty with the Indians, to restore it, though it is set apart. That is the case of *Burleigh v. Armstrong* (Rowell's Digest 278).

There are several other cases. Here is a case from Nebraska, reported on page 303 of *Contested Elections, 1834 to 1865*, second session, Thirty-eighth Congress, and it is the case of *Daly v. Estabrook*.

As to the votes from the the precinct of Genoa, in the county of Monroe: It is conceded that this precinct is "in the reservation of the Pawnee Indians," set apart for their occupancy by the United States. By the act of Congress organizing the territory it is provided that the territory occupied as an Indian reservation shall not be considered a part of Nebraska Territory, but that all such Territories shall be excepted out of the boundaries until, by arrangement between the United States and the Indians, the title of the latter shall be extinguished.

So by statute it was not in the Territory of Nebraska and they could not count the votes from there.

Another case is that of *Morton v. Daly*, on page 408 of the same volume, and the same set of facts existed. The act of Congress organizing the Territory of Nebraska is quoted, which excludes from the territorial limits of the State the Indian reservation in question, and then it is stated :

It was not claimed before the committee, nor do the committee understand it to be true in fact, that the Pawnees have ever made any such stipulation in their treaty as is here mentioned, or that they have ever signified their assent to the President of the United States to have their reserves included within the boundaries or constitute a part of the Territory of Nebraska. It follows, therefore, that persons residing upon this reserve are residents upon "no part of the Territory of Nebraska," and are not entitled to vote therein.

The next case is *Todd v. Jayne*, and here is a case where they did count the votes. It is found on page 562 of the same volume :

The second point rests upon a mistaken construction of the following proviso of the first section of the organic act organizing the territory: "*Provided, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United*

States and such Indians, or to include any territory which by treaty with any Indian tribe is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and form no part of the Territory of Dakota until said tribe shall signify their assent to the President of the United States to be included within said territory." Now, it is apparent upon the reading of this proviso that the territory which it is therein provided shall be set apart for any particular tribe of Indians, and thereby to be excepted out of the limits of the territory, is that which is so set apart by treaty with any particular tribe, and is so excepted by the treaty itself. It does not apply to any portion of the territory upon which Indians may happen to live, but only such portions as are held by particular tribes under and by virtue of treaties defining boundaries, and stipulating for exclusive jurisdiction to be exercised by the tribes holding them. No such treaty existed covering any portion of the election precinct under consideration, and therefore the vote there cast can not for this reason be excluded.

There votes were cast on an Indian reservation.

Mr. WICKERSHAM. But not by Indians.

Mr. GRIGSBY. No; but the question I am now discussing is whether this is the kind of a reservation that a man can not live on and vote, and that is disposed of. Now, the question is this: Is there anything about these particular Indians who live on this reservation which would prevent them from voting?

Mr. CHINDBLOM. What was the nature of the reservation involved here?

Mr. GRIGSBY. Those were regular Indian reservations.

Mr. CHINDBLOM. I mean in this particular election case.

Mr. GRIGSBY. They were reservations set apart at the request of the Bureau of Education and to which the Indians were permitted to go and where they could not be molested by the whites, so that they would have a better chance to become educated and advanced in citizenship. They went on those reservations, according to the testimony in this case, abandoning all tribal relations when they went there, and they went there for the purpose of abandoning tribal relations. That does not mean they could not associate together as individuals.

The objection Mr. Wickersham makes to the vote is that they are still there and living in tribal relations, in other words, that they have not taken up their residence separate and apart from the tribe; but taking up that residence separate and apart from any tribe means any tribe organized and existing as an organized tribe; it does not mean that you can not dwell in a community with members of the same race of people, but it means you can not live with them organized as a tribe.

The undisputed testimony in this case is that there was no semblance of any tribal conditions or customs or relations on these reservations from the time they were organized, and there is no evidence whatever to the contrary, and I will read a little testimony on that.

Mr. CHINDBLOM. Was there any Indian on these reservations in Alaska which are involved in this contest who exercised any kind of governmental authority?

Mr. GRIGSBY. None whatever.

Mr. CHINDBLOM. Was there anybody who acted in the capacity of a chief or medicine man?

Mr. GRIGSBY. Absolutely no one. Here is the testimony of the Rev. David Waggoner, who testifies that he has been familiar with these Indians since 1901: and, referring to the Indians at Klawock, he was asked:

Q. How long have you known these natives, Mr. Waggoner?—A. Well, I have known some of them since the 10th day of August, 1901. and I gradually became acquainted with all of them since that date.

Q. You have known them all for some years, then?—A. Some years, yes, sir.

Q. Do you know what, if anything, these natives have done in the way of severing their tribal relations?—A. They have what we as missionaries generally call severing their tribal relations, and according to that standard these people have severed their tribal relations.

Q. Now, what have they done in the way of severing their tribal relations?—A. They are not under the control of a family head or chief or clan head or any family head; they have separate homes; they handle their wealth accumulated as a family and not as a clan; they have adopted the American inheritance law; they are adopting and have adopted—these special men—the Christian marriage relations—the civil—and their homes are not community homes; and they are raising their children as we would, as civilized people would raise their children.

Q. Have they any chief, Mr. Waggoner?—A. Not that I know of.

Q. Well, you would know if they had one?—A. I haven't seen a chief in Klawock in these 18 years.

Q. If they had a chief there you would know it?—A. If they had a chief that controlled the village, I would know it.

Q. Do any of these men whose names have been read to you obey or follow the dictates of any chief or any other Indian officer other than those authorized by the laws of the United States to make civil laws?—A. Not as being a command. They may follow the suggestions or advice of those who are related to them, but they do not obey as a command, but only from their own judgment when they think it best to follow that advice.

Q. You don't understand my question.—A. I mean to say, as a matter of authority.

Q. I mean in a governmental way.—A. No, sir.

Q. What you mean to say, Mr. Waggoner, is that they will take the advice of others, just as a white man will take the advice of others?—A. Yes, sir.

Now, he testifies to the same thing with reference to the Indians at Hydaburg:

Q. Now, Mr. Waggoner, with reference to these reservations at Klawock and Hydaburg, do you know what, if any, supervision the Government exercises over the Indians that reside at those places?—A. I don't know of any supervision they have over the people as a people.

Q. None whatever?—A. None whatever.

Q. There is no Indian agent at either place?—A. No, sir.

Q. Are the Indians obliged or asked to remain upon these tracts that are reserved?—A. No, sir.

Q. What do they do in the way of going and coming?—A. They are perfectly free.

Now, he testifies with regard to the Indians at Juneau:

Q. Do they obey any chief?—A. They do not.

Q. Have they any chief?—A. They have not.

Q. Have they any tribal house?—A. They have not.

Q. Have they any form of tribal government whatsoever?—A. They have not, that I know of.

Q. You would know it, wouldn't you, if they did?—A. I think I would.

Q. Are any of them skilled workmen?—A. We would say they were. They are not common day laborers; those that work in the mines are not what we would say "muckers;" they do drilling, and some of them have even taken contracts for drifting in the tunnels.

That is the testimony of Waggoner. Now, there is also the testimony of Hawkesworth, the superintendent of the Indian schools

in southeastern Alaska. He testifies that he is the superintendent of the native schools in southeastern Alaska and has charge of the schools at Hydaburg, Klawock, Juneau, and Douglas, and that he has been familiar with conditions at Hydaburg and Klawock since 1911:

Q. Now, what, if anything, have the natives of Klawock done in the way of recognizing tribal government since you have known them?—A. Nothing.

Q. Has there been any tribal government of any kind at Klawock since 1911?—A. None at all.

That is the testimony of the superintendent of the native schools.

Q. What, if anything, do the natives at Klawock now do, or what have they done since you have known them, in the way of recognizing tribal relations?—A. There is nothing in recognition of tribal relations.

Q. Now, what, if anything, have the natives at Klawock done in the way of adopting the habits of civilized life?—A. Just the same as is common in other communities in Alaska—living as citizens, carrying on industries.

Now, he testifies that conditions at Hydaburg are about the same as at Klawock, if anything, a little more marked; that more progress has been made there and that more newspapers and magazines are subscribed for:

Q. Are newspapers and magazines subscribed for at Klawock?—A. Yes, sir.

Q. To quite a considerable number?—A. To quite an extent.

Q. By the natives?—A. By the natives; yes, sir.

Q. And at Hydaburg, that is even more so?—A. Yes, sir. At both of these places they have the weekly Seattle papers for sale there in the town, both at Klawock and Hydaburg.

And at one of those places they run a paper of their own edited by natives, and the newspaper is here in evidence as an exhibit. Now, testifying about the Juneau natives, Mr. Hawkesworth says:

Q. Do you know those natives?—A. Most of them I know.

Q. Are you familiar with their mode of life?—A. Yes sir,

Q. And the manner in which they regulate their affairs?—A. Yes, sir.

Q. You also have charge of the school situated at Juneau, a native school?—A. I do.

Q. How long have you been acquainted with the Juneau situation?—A. Since the summer of 1916.

Q. Since you have been there have they had any tribal government at Juneau among the natives?—A. None.

Q. Have the natives residing at Juneau recognized any tribal authority?—A. None.

Now, he goes on to say that all these things are self-evident, and the question is:

Q. I know, but you must remember that while these things are self-evident to you, I desire to get this matter in the record. I wish you would explain as fully as you can the mode of life followed by the natives at Juneau as compared with the habits of the civilized inhabitants.—A. Well, they live in regular individual homes for the most part, have regular furniture, do their cooking in the regular way, have regular occupations, some mining, others fishing, others boatbuilding, and each depends upon his own efforts for his living.

Omitting a portion.

Q. And educate their children?—A. The same way. In the matter of education, why, our native schools take them up as far as the fifth grade, and then all those that go beyond that are received into the city schools here in Juneau; the idea being the native school will do the primary work and as soon as they go beyond that the city school continues the education.

Now, he testifies, and so does Mr. Waggoner in the same way, as to the Indians at Douglas:

Q. What is the condition at Douglas; you know the natives there, do you not, also?—A. Yes, sir

Q. Do those natives there recognize any tribal authority?—A. As far as I know, they never have had any in Douglas.

Q. Do they recognize any kind of tribal relations at Douglas at the present time, or for the past number of years?—A. No, sir. There was just that misstatement in the paper last fall about this Jimmie Fox, that he was to succeed his uncle; but Jimmie came to the school teacher the next day and said that that was a mistake; that he didn't want to be any successor to his uncle, so he had an article published in the newspaper saying he was an American citizen and was proud of it, and that he wasn't the successor to his uncle.

Q. There was no chief located at Douglas, then, last fall or any other time since you have been there?—A. No, sir.

Q. And there has never been any chief since you have been here?—A. No, sir.

Q. Is there any difference between the manner in which these people live and the manner in which white people of similar station in life live?—A. No, sir. There are whites and natives in that beach section of Douglas, and you can not tell which is the white man's house and which is the native's; they all look alike.

Q. Either on the inside or the outside?—A. About the same.

Now, with reference to this reservation at Juneau. This reservation at Juneau originates wholly in the imagination of the contestant. Contestant says in his brief, on page 117:

The third Indian reservation from which Indian votes were illegally cast against this contestant is the Auk Indian Village Reservation, within the corporate limits of the town of Juneau. This tract of land was reserved by virtue of section 8 of the act of Congress of May 7, 1884, entitled "An act providing a civil government for Alaska."

He calls your attention to a specific act reserving a specific tract of ground. Now, let us see what section 8 of the act of Congress of 1884 is. It provides:

That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.

Indians or other persons shall not be disturbed in the occupancy of any lands which they occupy or claim. Judge Wickersham says to you in his brief:

The third Indian reservation from which Indian votes were illegally cast against contestant is the Auk Indian village reservation, within the corporate limits of the town of Juneau.

This tract of land was reserved by virtue of section 8 of the act of 1884, which is a general provision preserving the right of possession and occupancy to all the Indians of Alaska, and every other person, to such lands as they may occupy or claim. If it creates an Indian reservation at all it creates an Indian reservation anywhere an Indian happens to be, and it creates a white reservation wherever a white man happens to be. But he says it reserves this tract of land in Juneau, although the act simply means that the Indians in Juneau, down on the beach, who have their houses there, and at Douglas, Ketchikan, and everywhere else in the Territory, shall not be disturbed in that occupancy, and that is all it does provide.

It does not say anything about an Indian reservation, and it was not intended to create an Indian reservation. It is an imaginary reservation, and the one at Douglas is just like it. The evidence shows that these Indians residing at Douglas work in the mines and go fishing the same as white people who are down there with them. He showed you a map the other day, and he had a red line drawn around this Indian reservation; but there never were any limits prescribed for this Indian reservation, and no red line can be drawn around it. It formerly included the spot where the governor's mansion is to-day, and as the Indians left there they parted with title or abandoned their holdings, and the land they occupied became open for others. In every town in Alaska the only title was occupancy. I was in Nome some years before there were any patents granted, and occupancy was the only title, and the act of 1884 preserved that occupancy to all persons then occupying land. That was to protect the Indians, and to keep them from being driven off from where they happened to be. It merely protected their occupancy, and did not in any sense create a reservation; but the contestant would have you believe that such land, so preserved to them for their occupancy, is to be classed with Indian reservations in the United States, established by treaty with hostile tribes, who were treated with as nations and as aliens.

When they become naturalized under special provision of law—automatically naturalized—they are members of hostile tribes that are being naturalized, and the reason they had to take up their residence separate and apart from the tribe was because they were hostile enemies interned on their reservation, and they could not become citizens while living together in tribal relations, because it was not safe to extend them that privilege. But the situation in Alaska is entirely different. In the treaty with Russia the only reference to Indians is in article 3, which provided that the inhabitants of the ceded territory, if they desired to preserve their allegiance to Russia, might return to Russia within three years, but that if they should prefer to remain in the ceded territory they, with the exception of the uncivilized native tribes, should be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. That had reference to those who were then here and did not refer to their descendants. It is provided that the uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to the aboriginal tribes of that country.

Now, we had a situation there that this country never had before. This country never had anything to do with Indian tribes and reservations except those that were originally made for tribes which, at one time or another, had been hostile, and by treaty they were removed west of the Mississippi and they were interned; they were dealt with as nations and treaties were made with them, but there never was any treaty made with any Indian tribe in Alaska. The word "tribe" up there is used to describe a race and that is all. There we made a purchase and there were aboriginal people there, and in 1867 the right of citizenship was extended to the Russian citizens who chose to take advantage of it, that is, those who were there, but after we purchased Alaska from Russia a Russian who

was born in Alaska was born in the United States and became a citizen the same as if a Chinaman was born up there, he would be a citizen. There is no legislation on the subject of what becomes of those aboriginal Indians who never were hostile tribes, and there is room for the argument that every one of them after that, who was born there, became a citizen of the United States.

We did not have to confer citizenship on everybody who was in the territory when we bought it, but we did have to confer citizenship on everybody who was born in the United States territory, unless he were born in some part of a territory, on some Indian reservation, which could not give him citizenship by law. The Constitution provides that there shall be no discrimination on account of race, color, or previous condition of servitude. That is just a suggestion and it is not to be followed in this case, because the circuit court of appeals has recognized that these tribes in Alaska are to be considered as Indians with reference to the act providing for automatic naturalization if they sever their tribal relations and adopt the habits of civilized life. I think that act which provides for Indians becoming naturalized if they take up their residence separate and apart from any tribes, was passed with reference to the hostile nations, the Indians interned on reservations, and did not apply to Alaska natives.

Mr. CHINDBLOM. You said "civilized," but you mean "naturalized"?

Mr. GRIGSBY. Yes; become naturalized by adopting habits of civilization. But the circuit court of appeals says they do come within it and that settles it. We will say, then, that they have to sever their tribal relations and take up habits of civilized life, but does that mean that before they can vote they have got to go off and make a home for themselves somewhere else, leave their property and leave each other, unless they are living in tribal relations as an organized tribe. Furthermore, gentlemen of the committee, in the last contest it appeared that a lot of votes were legally offered from the town of Klawock. There were 28 or 30 Indians that went over to Craig, about 20 miles away, to vote. George Demert and a man named Pretovitch went up and actually tendered their votes. I believe Pretovitch was part Austrian. The judges of election would not receive their votes, and then all of the others turned around and went back, that is, the other 28 abided by that decision. The committee on elections on that question, which was thoroughly briefed and discussed as it has been here, slipped over it without much discussion. They said they would not throw out any Indian votes for the reason that the evidence was so unsatisfactory that they could not discriminate between one Indian and another, but they allowed those two votes for Mr. Sulzer on the expressed ground that they were citizens of the United States, but did not allow the other 28. However, they were in the same class and there was no distinction between them, but it was insisted that they did not try to vote, and right there Mr. Sulzer, in my opinion, lost 28 votes that should have been allowed, and I think the authorities are unanimous in that proposition.

The CHAIRMAN. They did not present themselves, however?

Mr. GRIGSBY. They were there, according to the evidence, together, and all went there for the purpose of voting; two presented themselves but the others did not.

The CHAIRMAN. And the committee held that the two should have the right to vote?

Mr. GRIGSBY. That the two should be allowed to vote and yet the evidence was the same as to all of them.

Mr. ELLIOTT. But the two were not allowed to vote at the election?

Mr. GRIGSBY. No, sir.

Mr. ELLIOTT. What did the committee do by stating they should be allowed to vote?

Mr. GRIGSBY. They counted those two votes.

Mr. O'CONNOR. And as to the others the committee held they should have presented themselves and been objected to or challenged.

Mr. GRIGSBY. The committee did count them.

Mr. O'CONNOR. The 26?

Mr. GRIGSBY. No; the two.

Mr. O'CONNOR. Because they went there and presented themselves?

Mr. GRIGSBY. Yes. The committee evidently went on the theory that the others should have presented themselves. The rule in that respect in some jurisdictions is that you can not count a vote that has not been cast; if it is offered and wrongfully refused it can not be counted, while in other jurisdictions a vote that is wrongfully shut out can be counted and counted for whom it would have been cast. But the invariable rule is that it is not necessary for all of a class to present themselves and in that connection I will read from section 139 of Ruling Case Law:

Where voters are rejected because they belong to a certain class it is not necessary to establish the fact that those who actually applied and were rejected were sufficient to change the result of the election. The erroneous rule adopted by the election officers affects the entire class and they may submit to it without waiving any rights. Though they do not present themselves at the polls and offer their ballots, they have the right to take notice of the decision of the board in other cases precisely like their own.

That is a law which was not called to the attention of the committee before. If it had been——

Mr. O'CONNOR (interposing). Where is that?

Mr. GRIGSBY. It is from section 139, elections, found in Ruling Case Law, and there is no authority to the contrary.

Mr. O'CONNOR. What volume of Ruling Case Law?

Mr. GRIGSBY. Volume No. 9, Ruling Case Law. That was the decision of the committee on this very question, that the voters from that reservation were allowed to vote, and the evidence showed, as it shows in this case, that Demmert, this man whose vote was counted, was at that time a native born Indian, living over there in that village, and a member of this native council. Under the territorial law, they have a city council elected by themselves. He was secretary of the lodge. They have an Indian brotherhood over there. He was associated with the Indians just the same as they were associated with each other. Judge Wickersham did not dispute, in fact he said that he did not dispute, that they were highly civilized, but they had not severed their tribal relations; they had not left this tract of land. Demmert had not done it when his vote was counted.

I want to show you what kind of a fellow this man Demmert is. Here is Demmert's testimony on page 414 of the record:

Q. What kind of a house do you live in?—A. Well. I have got a bungalow, 26 by 28 feet.

Q. How many rooms?—A. Five rooms.

Q. How much did it cost?—A. Why, the house alone cost about \$1,200.

Q. Now, what are the furnishings in it, in a general way. I mean?—A. Well, sir; I have got chairs, beds, a piano, and a talking machine; in fact, all the necessary equipment to have a happy home.

And then he is asked with regard to the other Indians:

Q. Where did these all reside?—A. They all lived at Klawock.

Q. Are they Alaska natives?—A. Yes, sir.

Q. How long have you known these gentlemen?—A. Why. I have known them for quite a number of years.

Q. Do you know whether they can read and write the English language?—A. Yes, sir.

Q. Can they or can they not read and write the English Language?—A. Well, the majority of them, pretty near all of them, can read and write and speak the English language, in fact all of them can speak pretty good English.

He further testified, record, page 415, that they had severed their tribal relations and adopted habits of civilized life; that they had no chief; that he never saw any tribal customs among them; that a good many were licensed engineers; and on page 416 he is asked the question:

Q. How much are you worth?—A. I should judge pretty close to \$30,000.

Q. How about the other natives whose names I have read; are they property owners?—A. Yes, sir; everyone, I think does.

Q. You mean everyone are property owners?—A. Yes, sir.

Q. And are some of them worth as much as you are?—A. Some are worth more.

The deposition of this Indian, Demmert, was taken up at Juneau, because his wife was sick up in the hospital. He is dressed as well as any of you gentlemen, speaks as intelligently as the ordinary workman, or more so, and was free to go to Europe or South America, or anywhere he wanted to, and did not bear the least resemblance to one living according to any old Indian customs or in any tribal relations. He is down there, according to the testimony, living with others like him, who have been brought to that condition and aided in coming to that condition by the fact that the Government did reserve this land for their use and allowed them to go on it, where they could be educated, and it has been very much of a success.

Now, I will spend but a few moments in going over the votes cast for Mr. Wickersham which I claim to be illegal; but, first, I want to show that with reference to these Indians at Juneau and Douglas, who Mr. Wickersham claimed voted for Sulzer, there is no evidence in the record as to how they voted, except that taken in rebuttal by him. He put his evidence in, in rebuttal, which should have gone in in chief, and, of course, we had no chance to rebut it, and up until the time he put the evidence in, in rebuttal, the only evidence was in the form of affidavits, which, of course, are not proper evidence, as we had no chance to cross-examine. But, aside from that, it is not proved that a single one of them was a disqualified voter, and that he was not a resident in every sense of the word, as much as an Indian could be. In rebuttal, about six or seven of them swore they voted for Sulzer.

Mr. CHINDBLOM. Did I understand you to say you could not cross-examine his witnesses that were offered in rebuttal?

Mr. GRIGSBY. We could cross-examine them, but we could not rebut those that testified in rebuttal. They were not called in, in Mr. Wickersham's case in chief, to prove who they voted for, but in rebuttal. We could not contradict them or offer any evidence going to offset their testimony.

Mr. CHINDBLOM. Could you not have offered evidence in surrebuttal?

Mr. GRIGSBY. The statute does not provide for it. The time for taking the testimony expires in 90 days, and Mr. Wickersham has the last 10 days under the statute for rebuttal, and that ends it. Otherwise we could have kept on taking testimony forever; but I had a right to meet his case which he put in in chief. He was up there scrambling for evidence, and he gave his evidence and put it in. There is a limit to the time that is allowed a contestant or contestee, and I used my 40 days in trying to offset what he introduced, and then he put some more evidence in, in rebuttal, that should not be considered by the committee in any way. There is evidence by the Indians who testified, by Waggoner and Hawkesworth, as to their being citizens of the United States, living under no tribal relations whatever, and not living on any reservation of any kind, but simply in possession of land which the Government protected them in the possession of, the same as it did the white people. In southeastern Alaska there are no Indians living under a chief. Down in Ketchikan, where they voted for Wickersham, they do not live under a chief. They come nearer to it than anywhere else in southeastern Alaska, according to the record, but they do not, and I do not claim that they do live under a chief.

Mr. HUDSPETH. Have they always voted?

Mr. GRIGSBY. No; those who voted at Juneau never voted before, those that voted at Douglas never voted before, those that voted at Ketchikan for Wickersham never voted before. Those down at Ketchikan have lived in the Indian village for 20 or 30 years.

Mr. HUDSPETH. Why have they not voted? Did they think they did not have the right to vote, or just ascertained that they had, or what was the state of their minds, do you know?

Mr. GRIGSBY. The elections commenced to get close, and that is the reason they voted. Down in Ketchikan they had never voted before they went up and voted for Wickersham. They live in an Indian village in Ketchikan, and have always lived there, protected in their possession under the same act. The only difference between the Ketchikan and Juneau Indians is that the city council of Juneau refrained from attempting to tax the Indians, and the evidence in this case shows that those at Ketchikan submitted to a tax in 1918. There was as much legal right for the Indians in Juneau to get a patent and pay a tax as there was for the Indians in Ketchikan, when you come to the test.

Judge Wickersham stands on the proposition in this case that these Indians on these reservations live there in tribal relations; that they have not taken up their residence separate and apart from any tribe; but that those in Ketchikan are also living together in an Indian village. I will read you the testimony of some of them. I will go back and get to them in their order.

I shall now discuss the illegal votes cast for Judge Wickersham. I have a list of them, which the committee asked me to furnish, which I will ask to have inserted in the record at this point.

List of persons claimed by contestee to have voted illegally for Wickersham for Delegate to Congress on Nov. 5, 1918.

ILLEGAL BECAUSE VOTED IN WRONG PRECINCT.

Name.	Record page.	Remarks.
Olaf Thorensen.....	410	
Charles Starish.....	465	
James Starish.....	468	
Sam Olson.....	480	
George Booth.....	497	
Louie Hudson.....	505	
Mark Williams.....	568	
William Zacharias.....	363, 365, 368	Also voted in wrong division.
Mrs. Wm. Zacharias.....	363, 365, 368	Do.
J. L. Lemoin.....	363, 365, 368	Do.
J. B. Hudson.....	363, 365, 368	Do.
L. Raynor.....	363, 365, 368	Do.
E. G. Stokes.....	363, 365, 368	Do.
Tom B. Hyde.....	363, 365, 368	Do.
Mrs. A. L. Spencer.....	363, 365, 368	Do.
Harry Osborn.....	106, 109	
N. W. Carpenter.....	106, 109	
E. W. Brown.....	636	
Martin Claich.....	636	
William Canning.....	636	
D. L. Green.....	636	
Ernest Peterson.....	636	
E. R. Peoples.....	636	
Sylvester Howell.....	636	

Also between 6 and 19 illegal votes at Anchorage; depositions from Anchorage.
Also 23 additional at Fairbanks: Fairbanks election registration book.

NOT RESIDENTS OF THE TERRITORY.

Mrs. Hans Hanson.....	360	
W. H. Hannum.....	458	
Mrs. W. H. Hannum.....	462	

NOT CITIZENS OF THE UNITED STATES.

Gus Cozakas.....	361	
Arthur Pinkus.....	366	
William Garrie.....	377	
Mat Fawcett.....	514	

SOLDIERS IN THE REGULAR ARMY WHO TESTIFIED THEY VOTED FOR WICKERSHAM.

Clement Stroupe.....	321	Contestee does not concede illegality of any soldier votes; but all of these named, except Joseph Newman, were clearly illegal voters, if any are; and Joseph Newman probably reenlisted in Alaska.
D. H. Tyer.....	205	
H. W. Whitman.....	252	
H. Labisky.....	63	
James W. McConnell.....	320	
Joseph Newman.....	243	

AFOGNAK PRECINCT, PUBLIC RESERVATION, INHABITED BY INDIANS LIVING IN TRIBAL RELATIONS.

Tomothy Maya.....	388	Aleut Indian living in tribal relations.
Matfray Agrick.....	382	Do.
Michael Boskosfsky.....	384	Do.
Evan Alhoon.....	390	Do.
And many others.....	390, 391	Containing list of 52 voters, many of whom were Indians living in tribal relations; and the others, white persons, who were trespassers and could not acquire legal residence. Wickersham carried this precinct, 37 to 12. See record 1916 contest. See testimony Fr. Kashevaroff, page 248, record, 1916 contest.

List of persons claimed by contestee to have voted illegally for Wickersham for Delegate to Congress on Nov. 5, 1918—Continued.

UNCIVILIZED INDIANS VOTING AT KETCHIKAN.

Name.	Record page.	Remarks.
Charles Starish.....	465	Also illegal; voting in wrong precinct.
James Starish.....	468	Do.
George Booth.....	497	Do.
Louis Hudson.....	505	Do.
Mark Williams.....	568	Do.
George James.....	531	
Joe Starr.....	527	
George Keegan.....	529	
Herman Ridley.....	526	
Edward Ridley.....	524	
Joseph John.....	522	
Mat Fawcett.....	514	
James Starr.....	511	
George Johnson.....	508	
Also about 30.....	529	Same class of voters. See testimony of above Indians and that of George Keegan.

Mr. GRIGSBY. I will go over this very briefly. There were 7 votes cast in southeastern Alaska, in the vicinity of Ketchikan, for Wickersham.

The CHAIRMAN. May I ask you one question before you get to that, and I do not want to take any time either? How many Indians voted this time at this election, all told?

Mr. GRIGSBY. In Alaska?

The CHAIRMAN. Yes.

Mr. GRIGSBY. Three hundred or four hundred.

The CHAIRMAN. How many had voted theretofore?

Mr. GRIGSBY. Well, these Hydaburg Indians had voted, and the Klawock Indians had voted, and the Unalakleet Indians had voted, and the St. Michael and Afognak Indians had voted, and there were a good many isolated cases of Indians who had voted, living in different towns, but the Indians never voted generally as they have in the elections of 1916 and 1918.

The CHAIRMAN. In what precincts did they vote? Can you give them, offhand?

Mr. GRIGSBY. I can tell you some of them. They voted in Juneau, Douglas, in Craig, Sulzer, Ketchikan, Afognak, Seldovia, Unalakleet, St. Michael No. 2, and in St. Michael No. 1. That is where they voted generally. Most of the Indians who lived there voted.

There were seven persons, including two white men, who voted for Wickersham in the wrong precinct in southeastern Alaska. The testimony is absolutely clear, the way I view it, as to all of these.

The CHAIRMAN. What are their names?

Mr. GRIGSBY. Olaf Thorensen, Charles Starish, James Starish, Sam. Olson, George Booth, Louie Hudson, and Mark Williams.

Mr. O'CONNOR. For whom did they vote?

Mr. GRIGSBY. For Wickersham. They testified they voted for Wickersham. It is also proved by a process of elimination that Harry Osborn and N. W. Carpenter, whose names are further down on the list, arrived in Sulzer precinct, and lived there less than 30 days before the election, having been shipwrecked, and they voted at Sulzer for Wickersham. Mr. Wickersham proved he received the ballots.

Mr. WICKERSHAM. It is not clear that they voted in Sulzer.

Mr. GRIGSBY. There is no doubt in regard to it.

Mr. CHINDBLOM. Were they produced as witnesses for Judge Wickersham?

Mr. GRIGSBY. No, sir; it was proven by a process of elimination. Mr. Wickersham got but three votes in that precinct, and the witness that he called stated that he was one of them, and that the other two were Osborn and Carpenter, and he knew it, because they told him so.

Mr. WICKERSHAM. Raffelson testified to the contrary.

Mr. GRIGSBY. Raffelson did not testify to the contrary. You will have to look at Raffelson's testimony, because he throws a slight doubt on it, but at that time, when Mr. Wickersham put in this evidence, he was endeavoring to prove that all the Indians that voted at Sulzer voted for Sulzer, so he proves that the only three votes for himself were cast by Osborn, Carpenter, and his witness, and therefore all the rest of the votes must have been for Sulzer, having been cast by the Indians from Hydaburg, so it does not lie in his mouth now to repudiate any of these votes. Any way, the preponderance of the testimony is that they did vote for Wickersham.

Mr. O'CONNOR. Two of those three were Indians?

Mr. GRIGSBY. No; they were white men. Harry Osborn, N. W. Carpenter, and a man named Shellhouse, were the three men who voted for Sulzer, and those were all the votes he got. He only got 3 votes, and Shellhouse says, "I am one of them, and these two men whom I have named, who were shipwrecked here, are the other two, because they told me so."

Mr. WICKERSHAM. Will you read the evidence?

Mr. GRIGSBY. All right; we will read the evidence. You may read it. You are going to reply. The other 47—and if that testimony was true, there must have been 47—all voted for Sulzer, which included all the Indians from Hydaburg—not the whole 47 were Indians, but it included all those from Hydaburg, and the object was to show that all these Hydaburg Indians voted for Sulzer, by a process of elimination, and he succeeded in doing it to my satisfaction and to his own satisfaction.

Now, William Zacharias, Mrs. William Zacharias, J. L. Lamoin, J. B. Hudson, L. Raynor, E. G. Stokes, Tom B. Hyde, and Mrs. A. L. Spencer were, according to the testimony, residents of the fourth division of Alaska, and arrived in Cordova shortly before election day, and voted, not only in the wrong precinct, but in the wrong division. There is no evidence in the record as to how any of them voted, except the evidence of Frank Foster. Frank Foster was the notary before whom their depositions were taken, and then one of the witnesses put in an affidavit of Frank Foster, and it is not proper evidence. The other side was not given an opportunity to cross-examine Foster, and I claim it should not be considered.

But you simply have to have these eight people who voted in the wrong division. Mr. Wickersham put Mrs. Spencer, one of these people, on the stand down in Seattle to contradict the statement of one Walker that she had told him she voted for Wickersham, but Walker had not testified to that. Walker only testified to the fact that they lived in Fairbanks division. He did not say he had any

conversation with anybody; but Mrs. Spencer testified for Wickersham down there, and in an attempt to rebut something that Mr. Wickersham stated had been testified to was asked how she voted, and refused to answer, evidently with the sanction of counsel. He hunted her up, and she was a very willing witness. She was told, of course, that Walker had testified that he said so-and-so to her, and she had said so-and-so to him, and she swore she would not speak to the man on any occasion, but she stated it was her own business how she voted, and she would not tell, and there is no evidence, as we claim, that she voted for Wickersham.

I know myself how some of these parties voted, but that is not in evidence. I know from talks with them how they intended to vote, but I will not claim there is any evidence in the record as to how any of them voted.

Mr. CHINDBLOM. Any of those eight?

Mr. GRIGSBY. Any of those eight; but there are eight illegal votes, and, under the rule adopted by the last committee, they will have to be apportioned. Wickersham carried Cordova, and they will have to be either approtioned pro rata to the votes counted in the election at Cordova or be thrown out.

Mr. O'CONNOR. Why are these eight votes illegal?

Mr. GRIGSBY. They voted in the wrong division. They lived in Fairbanks and voted in Cordova. If these eight votes were enough to change the result of this election, there are two rules to follow: One of them is to apportion them to the different candidates according to the votes cast in the precinct. This rule has been adopted in several cases in the House of Representatives. It is a very poor rule and may work an injustice. All the votes may have been for one or the other of the candidates. If you can not ascertain how they voted in a legislative body having the power to call a new election, that precinct should be thrown out. But I do not care how you dispose of them. It does not make any difference. It will result in a gain of about one vote for Sulzer if they are apportioned pro rata according to the votes cast in the precinct.

Now, E. W. Brown, Martin Claich, William Canning, D. L. Dreen, Ernest Peterson, E. R. Peoples, and Sylvester Howell are residents of the fourth division, and voted at Fairbanks and elsewhere in that division, but voted in the wrong precinct. The registration book which everybody signs who votes has a column where you state your residence, and these people signed from Brooks, Fairbanks, and Hot Springs.

Now, one of the two witnesses who gives testimony in regard to these seven persons is John Moe, who is an agent for the suppression of the liquor traffic among the Indians, and he testifies from conversations had with these people, after election and before election, in the presence of other people, in which they avowed publicly that they were going to vote for Wickersham or had voted for him, and that is all the evidence there is. Moe is a Democratic officeholder, but Mr. Wickersham says he is a saloon keeper, or was one, and ran a low dive in the tenderloin. He also says the same thing about Walker, who did not testify to anything except that certain people lived in Fairbanks division. And he also said practically the same thing about Austin, who testified that Wickersham ran on a Democratic platform.

The witnesses against him are impeached in that manner, but Moe gives the times, the places, and the persons present when these conversations took place, and under the authorities that Mr. Wickersham cites to you gentlemen such evidence can be considered.

Further than that, Mr. Claich and Mr. Ernest Peterson were called in rebuttal to offset this testimony of Moe, and it was attempted to be proved by Mr. Wickersham's attorney that they were in fact residents of Fairbanks.

Mr. Claich testifies, record, page 679, that his residence was Fairbanks, but the record shows he spent nearly all of his time away from Fairbanks and most of it at Brooks; that whenever he visited Fairbanks after the year 1914 he stopped at the hotel, and he registered in this register from Brooks, in the column where you state your residence, and he does not deny that he voted for Wickersham. Here a man goes on the stand and said he talked with this man, and that he claimed he voted for Wickersham, and in the presence of other people, and this man is called to rebut that and makes no statement about it.

Mr. CHINDBLOM. Was he asked about it?

Mr. GRIGSBY. He was not asked about, so it is almost conclusive that he did vote for Wickersham. He failed to rebut this evidence, although he had an opportunity to do so.

Mr. O'CONNOR. He was on the stand?

Mr. GRIGSBY. He was on the stand, and this man also says that it was the general belief that a person could vote in any precinct in Alaska where he chanced to be on election day. Mr. Wickersham says that all these votes were a willful and deliberate fraud. I say this man did think he had a right to vote at Fairbanks.

Then Mr. Peterson—record, page 682—testified that he claimed Fairbanks as his home and owned a home in Fairbanks, Alaska. On cross-examination, however, he admitted that he was mining at Brooks, 75 miles from Fairbanks, since 1915; that he voted at Brooks in 1916, at which time he was still mining in Brooks; that he considered his residence to be in Brooks in 1916 while mining there, and that he had been mining there ever since. Peterson also registered from Brooks in the election register and further testified that he believed he could vote in any precinct in Alaska where he chanced to be on election day. Now, he registered from Brooks, voted in Brooks in 1916, mined there, and considered it his residence while he was mining there, and the evidence is clear, and he does not deny voting for Wickersham. The other 5 were not on the stand, but the fact that they voted in the wrong precinct and for Wickersham is proven by lengthy testimony as to conversations had with John Moe, this Indian agent, and it is too long to read to you gentlemen.

You will have to read the evidence yourselves and judge of its sufficiency, to establish how these people voted. It is uncontradicted. Moe testifies to time, place, and persons present at the conversations.

At Cordova, also, going out of that division into the next division, Mrs. Hans Hanson testified that she had never been in Alaska but six months when she voted, and she married after she went there, so her vote, of course, was illegal. She testified she voted for Wickersham.

W. H. Hannum—record, page 458—was also a nonresident of the Territory, according to my contention. He never had been in Alaska any one year for a year. He was up there in the country on business during the summer but went out in the winter, and never had acquired a residence. He did not testify for whom he voted, but I asked him the following questions:

Q. Did Mr Wickersham advise you that you did not have to tell for whom you voted?—A. I asked him the question.

Q. When?—A. I think it was Saturday evening.

Q. Where?—A. In the Revilla Hotel.

Q. Just exactly what did you say to him?—A. I said, Will it be necessary for me to tell for whom I voted, and he said, It is not.

Mr. HUDSPETH. Who is that?

Mr. GRIGSBY. W. H. Hannum, record, page 459. Mr. Wickersham actually advised one of these men of his legal rights correctly.

I further examined him as follows:

Q. Did you have an engagement to meet him at that time?—A. I did not.

Q. Did he send for you?—A. No.

Q. What is the reason you don't want to tell for whom you voted?—A. I would like to reserve that right.

And then I go on after him:

Q. Do you not know it to be a fact that Mr. Wickersham has advised many of the witnesses, if not all witnesses, that he has called in this contest, that it is their duty under similar circumstances, under which you are testifying, to disclose how they voted?—A. He never said so to me.

Q. Do you know as a fact?—A. I don't know.

Mr. WICKERSHAM. That was a fact.

Mr. GRIGSBY. What was a fact?

Mr. WICKERSHAM. That I advised all of them that testified.

Mr. GRIGSBY. All but this one?

Mr. WICKERSHAM. No; I advised him too.

Mr. GRIGSBY. Oh, I will admit that.

Mr. WICKERSHAM. He simply misunderstood.

Mr. GRIGSBY. All right.

Mr. WICKERSHAM. That is mentioned in the evidence further along.

Mr. GRIGSBY. I know. I will read it.

Q. Is the reason you don't want to tell for whom you voted because you don't want to disclose as a matter of personal privilege or because you don't want to hurt Mr. Wickersham in this contest?—A. Jointly so.

Q. Both?—A. Yes.

That is the evidence I have that he voted for Wickersham, and it is sufficient.

Mr. WICKERSHAM. I agree with you.

Mr. GRIGSBY. You agree that he voted for you?

Mr. WICKERSHAM. No; I agree that is sufficient.

Mr. GRIGSBY. All right. There is one thing we agree on at last.

Mr. WICKERSHAM. I want the same rule applied all the way through the case.

Mr. GRIGSBY. If you have any cases where the evidence is as strong as that, I want you to apply it.

On redirect examination, after Mr. Wickersham has been shown up as advising this witness, he asks the witness this question:

Now, I haven't objected to anybody's telling how they voted, and I don't object to your saying how you voted, and I leave it entirely up to you; and if

you want to tell I don't want to make any objection to your telling how you voted on November 5, 1918, for delegate; it is up to you, not to me.—A. Well, I decline to tell.

If Mr. Wickersham thinks that puts him out of the hole, he is welcome to all the comfort he can get from thinking so.

This man's wife testified but will not tell, or did not know for whom she voted. She refused to answer straight out. Now, I do not claim there is any presumption that a man's wife voted the way her husband did, and I do not, therefore, care to insist that there is any evidence as to how she voted. There is not any, except that she was Hannum's wife.

Now, gentlemen, I want to go back just a little and interrupt the orderly procedure. There was something I overlooked with reference to the Indian vote. One of the witnesses called by contestee was Seward Kunz, who testified on page 408 of the record. Seward Kunz was the Indian who interested himself in seeing that the civilized Indians around Juneau and Douglas took part in the election. He is the Indian that went to the district attorney's office and got the form of formal affidavit made by Mr. Smiser, which Mr. Smiser told them established the *prima facie* right of an Indian to vote, copies of which affidavit Mr. Reagan took over to the judges of election in Douglas and delivered, and took them nowhere else. He never talked with any Indian that day or any other day as to how he was to vote, and took no part in the election whatever, according to the undisputed evidence in the record. If Mr. Smiser made any mistake it was in not telling these judges of election that when an Indian walked up and demanded a ballot as a citizen of the United States, that unless he was challenged they should give it to him, and if he was challenged, he should be compelled to swear in his vote. That is what the statute says. That is all they have to do. Of course, if a savage with a tomahawk, and feathers in his head, and war paint on, came into the polls, in defense of themselves they might shoot him or throw him out.

But here are Indians in white men's clothes, working in mines and on gas boats, and they walk up to the polls, and the statute applies to them, and if they demand a ballot, the only thing that can be done with them is to make them swear their votes in, if they are challenged; and any affidavit from Mr. Smiser would not affect their right to vote at all. But Mr. Smiser had these papers made out in which he informed the judges what the law was about the Indians having the right to vote, and he stated the law correctly. The only place that he made a mistake, if he made any, was in intimating that the judges had anything to do with trying that out. They could not try out each individual case. If an Indian is entitled to a vote, and he walks up to the ballot box, he is entitled to a ballot; and there is no form of oath to overcome the challenge interposed except the statutory form, so if an Indian is challenged, this affidavit would not be sufficient to overcome it; he would have to swear that he was a citizen of the United States, and a resident of the Territory of Alaska.

Mr. O'CONNOR. Where is the affidavit?

Mr. GRIGSBY. That is here in evidence. It is not an affidavit authorized by law. The Territorial legislature provided a form of certificate to be issued by the judge of the United States district court

to Indians who were able to present the necessary facts to be entitled to it; which certificate is *prima facie* evidence that the Indian to whom it is issued is entitled to vote. The judge of the court is not authorized to extend the right of suffrage to Indians, but simply to issue a certificate which constitutes a convenient method of proving the qualifications of the Indian.

To obtain this certificate the applicant has to go before the court and undergo examination upon the indorsement of five white citizens, and if he is found sufficiently qualified as to the conditions which are required to be complied with to make him a citizen, then the judge of the court issues him a certificate, which is *prima facie* evidence of his citizenship, and that is all. The judge has issued those to Indians in Juneau, in Douglas, in Klawak, and in Hydaburg, so that you have a judicial determination that the Indians in all those places, if otherwise qualified, can vote, notwithstanding they are living there on these so-called reservations, and with each other. You have that, and you have your committee report of 1916, which shows that they can vote down at Klawak, so that is established.

Now, Seward Kunz testified that the day before election Judge Wickersham's attorney, Mr. Marshall, met him on the street and took him down to the Dispatch office, which is a weekly newspaper, and they tried to get Kunz to go out and do some work among the Indians for Mr. Wickersham, and they argued with him about the fish bill. Mr. Wickersham was making his campaign upon the Sulzer fish bill. But Seward told him he could not do anything. Mr. Wickersham spoke up and he said "he had Nigger Watson down at Craig"; that is where the Klawak Indians voted, and where a lot of other Indians resided; that he had "Nigger" Watson down at Craig working for him, and that he was getting all the natives down there interested in the election for him, that is for Wickersham, and he told him that "Nigger" Watson went to his own expense getting these sample ballots printed, and other matters; took a trip over to Craig at his own expense, "and the only word I said was I could not afford to do that. If I had a little time and could have done a favor, I would, but it was too late; it was the night before election, and I could not do anything. All I could do was to accept these ballots from him and the others."

He had both Wickersham ballots and Sulzer ballots, and these papers from the district attorney which he says he took to the Indians that he considered civilized, but that he did not urge any of them to vote in any particular manner.

Then Mr. Wickersham's attorney, Mr. Marshall, cross-examines the witness, and he admits by his questions that everything that Seward Kunz said was true about the conversation. He says:

Q. Where did I pick you up, do you remember?—A. Right here in front. No; it was over here, the first time I met you, right across from Burford's corner.

Q. Wasn't it just as you came out of the Democratic headquarters down here below the Alaska Hotel?—A. No; it wasn't.

Q. What was the principal topic of the conversation down there at the Dispatch office when we went down there?—A. All I understood, you took me down there and you showed me a plat of the trap site, the fishing gear, and you showed me how it was situated, and I did not understand anything about it. I told you I did not understand fishing and could not say anything about it.

Q. Well, wasn't the main subject of my conversation down there because of

the Sulzer fisheries bill and its effect on seine fishermen in Alaska, all fishermen except trap fishermen?—A. Something to that effect, but I didn't understand fishing, I told you that that evening.

Q. Well, that was the main topic?—A. That was the main topic; yes, sir.

Q. And didn't Judge Wickersham tell you that he had explained that bill down at Ketchikan and that among others who had listened to his explanations and talked to him about it were some native fishermen and that they were pretty much worked up over the fact that that bill would deprive them of the opportunity to fish?—A. Something to that effect; yes, sir; as near as I can remember.

Both Mr. Wickersham and Mr. Marshall were there, but they did not contradict Seward Kunz's testimony. They got him down there and tried to get him to go out and work among these very Indians whose votes he is attacking now. When George Demmert took the stand he referred to this "Nigger" Watson that Mr. Wickersham told Kunz was down there getting the Indians at Craig to vote for him. On cross-examination by Mr. Rustgard, contestant's attorney, George Demmert, testified as follows (record, p. 420):

Q. Do you know how those natives [referring to Klawock] voted; who they voted for?—A. No, sir.

Q. I mean the last election, November 5, 1918?—A. No, sir; but Watson was down there pretty strong for Wickersham.

Q. Who?—A. "Nigger" Watson.

Q. He doesn't live at Klawock, does he?—A. Why he was there quite a while before the election.

Q. At Klawock?—A. Yes, sir.

Mr. Wickersham and his attorney got Seward Kunz down to the Dispatch office and tried to get him to go out and work among the natives in Juneau and Douglas and give them ballots, and Mr. Wickersham states that he sent "Nigger" Watson down to work for him at Craig; George Demmert says that "Nigger" Watson was at Klawock working for Mr. Wickersham among the natives; and the vote we saw at Craig was 47 to 50, so he must have done pretty good work.

Mr. ELLIOTT. Is Watson a Negro?

Mr. WICKERSHAM. He is an Indian. The evidence shows that.

Mr. GRIGSBY. Demmert testifies he is a Negro, Mr. Wickersham. He may be half and half. He lives with the fishermen.

Mr. HUDSPETH. What nationality are these fishermen?

Mr. GRIGSBY. The fishermen are of all nationalities. The Indians, of course, all fish, and the fishermen are composed of every nationality.

The CHAIRMAN. You refer to these fishermen. Are they employed by some one to do this fishing, or do they do the work on their own account?

Mr. GRIGSBY. The Indians?

The CHAIRMAN. Yes.

Mr. GRIGSBY. Some of the Indians work in the canneries in various capacities, and some of them go out fishing for themselves to get in a supply of fish for the winter. Some fish for themselves and sell their fish to the canneries, and are not employed just the same as white men, with this distinction, that some Indians fish for the purpose of getting fish to dry for food for the winter.

Mr. CHINDBLOM. Are these Indians Eskimos?

Mr. GRIGSBY. No, sir. These southeastern natives are Indians.

Mr. CHINDBLOM. Are any of these Indians who voted here Eskimos?

Mr. GRIGSBY. There are some at Nome, at St. Michael and Unalakleet, but none of those that we have been talking about.

Mr. CHINDBLOM. None of the Indians of whom complaint is being made here are Eskimo Indians?

Mr. GRIGSBY. None that have been discussed so far. There are some that I do not expect to discuss.

Now, to return to the illegal votes cast for Wickersham, Mrs. Hans Hanson did not live in the Territory over six months, but voted for Wickersham at Cordova.

At Cordova, Gus Cozagas testified that he voted for Wickersham. He was not a citizen of the United States.

Arthur Pinkus refused to testify how he voted, but stated that he voted at Cordova. Dr. Dooley, Mr. Wickersham's attorney, instructed him he did not have to tell for whom he voted, and acting on that advice or independently of it he refused to state. But Mr. Dooley, Mr. Wickersham's attorney, put in an affidavit signed by Pinkus to the effect that he was a citizen of the United States, which was sworn to before the deposition was taken, showing that Mr. Wickersham's attorney got busy to head this fellow off from testifying before he was put on the stand. Now, the question is whether you can draw a sufficient inference from it to determine how he voted. I think there is quite a strong inference that this man voted for Wickersham.

William Garrie, record, page 277, was an alien and not a citizen, and voted for Wickersham and testified so.

Mat Fawcett, a nonresident, not a citizen of the United States, record, page 514, voted for Wickersham.

Mr. WICKERSHAM. Did Mat finally sign his affidavit?

Mr. GRIGSBY. Yes. Over in Afognak there are a lot of Indians that live in tribal relations, according to the testimony in the last contest and in this contest, and have a chief. It is testified to by Martin Larsen (record, p. 381) that the Aleuts at Afognak have a chief; that they live in an Indian town; and, furthermore, Afognak is a reservation. It is not an Indian reservation, but it is a reservation for fish culture; and in one paragraph of the order of 1892, signed by President Harrison, creating this reservation it states:

Warning is hereby expressly given to all persons not to enter upon nor occupy the tract or tracts of land or waters reserved by this proclamation, or to fish in or use any of the waters herein described or mentioned; and that all persons or all corporations now occupying said island or any of said premises, except under said treaty, shall depart therefrom.

No person, therefore, has a right to be on the reservation except those who obtained that right by the treaty of purchase. The Indians are all living together, and the Aleuts are full-blooded Indians. They have a chief, and the creoles have a chief, too; but the creole is a half-blood Russian and may be entitled to vote as being a descendant of a man admitted to citizenship by the treaty.

These Indians are more or less civilized; the Government has schools for them; they have gardens; and the fact is testified to as to their civilization, but they live under a chief. In 1916 the priest there, Father Kashevarof, testified as follows:

Q. Do you know whether the Aleuts residing in the Aleut village at Afognak have a chief?—A. They do.

Q. What is the name of the chief?—A. Gregori Yakanak.

Q. Do they live there in tribal relations; that is, does the chief have control of them?—A. The chief acts as their representative in any needs they may have for him, especially when they are in need or destitute. When the fur laws have been passed, they look to him to advise them when they can hunt, and when the season is open and when it is closed.

Q. Now, do all the members of the tribe of Aleuts obey their chief?—A. Yes, sir.

Q. That has been the case for many years gone by, has it not?—A. It has.

Q. They are now living in the same tribal relations that they did 25 years ago?—A. Yes; only a good deal better now.

Q. So far as their obeying the chief, it is the same now as then and always has been?—A. Yes, sir.

Q. By Aleuts you mean the aboriginal race in Alaska and their descendants, do you not?—A. Yes, sir.

Gregori Yakanak was their chief, and testified in the last contest through an interpreter, as follows:

Q. State your name.—A. Gregori Yakanak.

Q. Where do you live?—A. At Afognak.

Q. What part of the town do you live in?—A. In the Aleut village.

Q. Are you the chief of the Aleut Village of Afognak?—A. Yes, sir; I am.

Q. Were you the chief at the time of the election in November last year?—A. No.

Q. Who was chief?—A. I misunderstood your question before. Yes; I was chief.

Q. Did you vote at the election held at Afognak on the 7th day of November, 1916, at which there was a Delegate to Congress voted for?—A. Yes, sir.

Q. Can you read or write the English language?—A. No.

Q. Can you read or write the Russian language?—A. No.

Q. Can you speak the Russian language?—A. No.

Q. Can you speak the English language?—A. No.

Q. The only language you speak and understand is the Aleut language, is it not?—A. That is it.

Q. Who did you vote for at the election held on the 7th day of November, 1916, at which a Delegate to Congress was elected?—A. I don't know, I have forgotten.

Q. What did you do when you came to the place where they were holding the election?—A. I had somebody write it for me, and I then put it in the box.

Q. Did you tell any person who wrote it for you who you wanted to vote for for Delegate to Congress?—A. I have forgotten.

Q. Did John Tanshwak write your ballot for you?—A. I have forgotten.

Q. Did you tell the person who wrote on your ballot who you wanted to vote for for Delegate?—A. I have forgotten whose name I told him to put on the ballot.

Q. Who told you to come up to the place where they were holding the election and vote?—A. No one; everybody came up and I came along.

Q. Did Mr. Petellin fix your ballot for you which you put in the box?—A. I don't know, but I think not.

Q. Do you know any person that you voted for at that election?—A. I do not.

Q. For whom did you vote for attorney general?—A. The interpreter says he can not interpret this in the Aleut language.

Q. For whom did you vote for senator?—A. The interpreter says he can not interpret this in the Aleut language.

At Afognak in 1918 there were 37 votes cast for Wickersham and 12 for Sulzer. The testimony in this record shows that 5 of those that were cast were by Aleut Indians, and that 3 of them, at least, voted for Wickersham, and that they lived under this chief in this Indian village, where they recognized tribal relations for the last 25 years, at least. There are many other Indians there who voted at the election and whose vote is not proven for anybody.

The CHAIRMAN. You say there were 53 votes cast at that precinct?

Mr. GRIGSBY. Thirty-seven for Wickersham, 12 for Sulzer, and 3 for Connolly. That would be 52, I think. There is a list of these voters on pay 390 of the record: Connolly, 3; Sulzer, 12; Wickersham, 37. The evidence in this record is that Evan Alhoon, Mike Boskofsky, Matfrey Agick, and Nicolai Agick—not Nicolai Boskofsky, but he is probably a brother of the other Indian—voted for Wickersham.

Here is Michael Boskofsky, who testified that he voted for Wickersham. He said that he could not read or write English or Russian; that he did not know who the President of the United States was; that Wickersham was the governor of Alaska; that he did not know who the present Delegate to Congress was; and that the United States is a Kingdom.

Matfrey Agick testified, through an interpreter, that he was an Aleut Indian; that he could not read or write English; that he voted for Wickersham on November 5, 1918; that one Petellin helped him mark his ballot, and others testified to the same effect. Three Aleuts altogether testified that they voted for Wickersham. The testimony of Father Kashevarof identified several others of this list of Aleut Indians, so that there is an unknown number of illegal votes. They are not all Indians living in tribal relations. There are a lot of white people there, who could not be on the island except as trespassers, and if this precinct was cast out, it would result in a change of 25 votes. There is probably a question whether there are any legal votes there. I do not claim that to set aside this island as a reservation for fish culture would take it out of the Territory, but when all persons are warned to stay away from there except those that are there under the treaty with Russia, then everybody who is there otherwise is a trespasser, and if a trespasser under the Executive order, can not acquire a voting residence. Some of them may be entitled to vote, but just read the testimony in regard to Afognak, and then read for whom the civilized Indians of Alaska voted in this election.

I am now going to comment upon the Indians at Ketchikan.

Mr. CHINDBLOM. Does that reservation cover the whole island?

Mr. GRIGSBY. It covers the whole island. There are at least three votes of Aleuts living in tribal relations, cast for Wickersham. The Indians at Afognak are the only Indians in this case proved to be living in tribal relations.

Mr. HUDSPETH. How many of those votes were for Sulzer?

Mr. GRIGSBY. Twelve out of 52; 3 for Connolly and 37 for Wickersham.

Mr. HUDSPETH. What Indians?

Mr. GRIGSBY. I do not know who they were.

The CHAIRMAN. Twelve votes in the precinct were for Sulzer?

Mr. GRIGSBY. Yes.

Mr. HUDSPETH. You say there were three of the Indians voted for Wickersham?

Mr. GRIGSBY. Yes, sir; three swore they did.

Mr. HUDSPETH. Did you have testimony that they voted for Wickersham?

Mr. GRIGSBY. Testimony as to three. As to the rest of them it is left very much in doubt.

Mr. CHINDBLOM. Is that island of Afognak one precinct?

Mr. GRIGSBY. I do not know. There is a precinct up there at the village of Afognak, but that takes in——

Mr. CHINDBLOM. Where these Indians voted?

Mr. GRIGSBY. Yes; where the Indians voted, and this precinct is established right in this Indian reservation.

Mr. CHINDBLOM. Does the precinct cover more than the reservation?

Mr. GRIGSBY. I do not suppose it covers as much. I will read the order here. It is section 232.

Mr. CHINDBLOM. If all the persons on the island except the Indians were trespassers, and the Indians did not have the right to vote, it would appear that there is not any such thing as a voting precinct there at all.

Mr. WICKERSHAM. The committee two years ago held that those people were entitled to vote.

Mr. GRIGSBY. I will read to you in a minute this order of 1892.

Mr. WICKERSHAM. What are you looking at now, section 232?

Mr. GRIGSBY. Yes; section 232 of the Compiled Laws.

Mr. WICKERSHAM. Page 174?

Mr. GRIGSBY. Yes, sir. This is the reservation proclamation. It says:

The national forest is hereby changed, and a reservation is set apart as a public reservation, including the use for fish culture stations, said Afognak Island, Alaska, and its adjacent bays and rocks and territorial waters, including, among others, the Sea Lion rocks and Sea Otter Island.

Mr. WICKERSHAM. Read the proviso that follows that, will you?

Mr. GRIGSBY (continuing):

Provided, That this proclamation shall not be so construed as to deprive any bona fide inhabitant of said island of any valid right he may possess under the treaty cession of the Russian possessions.

Mr. CHINDBLOM. In the event that there were a bona fide resident there he would be entitled to vote, so there is no use pursuing that inquiry any further.

Mr. GRIGSBY. You will recall the evidence expressly given as to persons now living there. Some of them could not vote legally. Of course, the native Russians were citizens by the treaty.

Mr. CHINDBLOM. I know. the native Russians were made citizens by the treaty.

Mr. GRIGSBY. Here are a lot of white people, not the Russians but whites and other inhabitants. But I do not care anything about that. There were a lot of Indians there who were civilized but had not severed their tribal relations. Nearly all these Indians must have voted at Afognak for contestant, who is trying to throw out the Indian votes in southeastern Alaska on the ground that they lived on reservations.

I am going back to the Indians at Ketchikan. The evidence is that upward of 45 or 50 Indians voted at Ketchikan who never voted before, and they were led up and voted by Bob Oliver and Mr. Hunt, who were Wickersham's supporters. Fifteen of them testified they voted for Wickersham, and here is the testimony of Charles Starish, who in education typifies about the average of these

Indians. There are one or two of them well educated, but this is the average. He testifies as follows, on page 465 of the record:

Q. How did you come to vote at that time?—A. A man told me to come over—Bob Oliver. I was pass him and Judge Stackpole, down there standing, and he asked me to come over, and so I came over here.

Q. Bob Oliver and who else?—A. Harvey Stackpole.

Q. Did they tell you whom to vote for?—A. Yes; they tell me about anyone, big piece, sheet paper, name on. You are to mark the names that is.

Q. What tribe of Indians do you belong to, Charlie?—A. Grizzly Bear.

Q. Never voted before?—A. Never.

Q. Where was Mr. Wickersham's name when you made a mark on it?—A. I don't know exactly; I forgot that.

Q. You don't know what office he was running for?—A. Yes.

Q. What was the office?—A. Wickersham.

Q. Wickersham office?—A. Yes.

Q. What office was he running for; do you know?—A. No.

Another one of these Indians, Jimmie Starish, record, page 468, testified as follows:

Q. Do you know what office Mr. Wickersham was running for?—A. What?

Q. Do you know what office he was running for?—A. No.

Q. Did you talk to Bob Oliver?—A. No.

Q. Did Bob Oliver talk to you?—A. No. When I was down in Saxman fellow is George Brown; he came down with George Williams; he is a native fellow. He come down to take him down to vote, and that day—election day—so I came up here. When I come up he leave me before at the post office. When I come there I see Mr. Dale Hunt, and he asked me if I voted, and I said "No," and he says, "You come with he, then," and I come up with him right in the room; and he went back again. Then they called me at the table to vote, and when they gave me a paper I write it there again, and see him, and I heard before that, and so I vote Wickersham.

Q. Can you read?—A. I read a little bit.

Q. Could you read enough to see his name?—A. Yes.

Q. Anybody tell you how to mark it?—A. I had a sample before that time.

Q. Who showed you the sample?—A. They come out. I don't know who give me that. They had big pile of samples how to mark on it. So I seen how to mark by cross.

Q. Did you have the sample with you when you marked it?—A. I had it nearly over one days before I mark.

Q. And you marked just like the sample?—A. Just one name they had marked on it.

Q. Rest of it has nothing on it?—A. Just showed this mark and you can vote and mark the same thing.

George Booth testified to about the same thing, and did not know for what office Mr. Wickersham was running.

Here is George Johnson, who has a big totem pole in front of his house in the Indian village of Ketchikan, and pays taxes. He testifies as follows:

Q. Where did you vote last election day?—A. Mr. Hunt he took me to vote. I am not sure. Mr. Hunt he took me to vote.

Q. Did you get a paper telling you how to vote? When did you get this paper?—A. Mr. Bob Oliver he tell come on go and vote for paper—long paper. All right, I tell.

Q. Who marked the ballot? Bob mark the ballot for you?—A. No; I mark same cross.

Q. Where did you mark the cross on the papers?—A. Across that paper.

Q. Whereabouts on the paper?—A. Say; take good interpreter.

Q. Where did you make the cross on paper? Who told you where to put the cross?—A. Mr. Hunt.

Q. He told you?—A. Yes.

Q. Do you know what office Mr. Wickersham was running for?—A. No.

Q. Did you ever vote before this last election in November? You vote first time last November?—A. In this house?

Q. Yes.—A. Yes; the first time, Mr. Hunt.

Q. Mr. Hunt and you voted?—A. Mr. Hunt.

Q. And when you got up here you go right to Mr. Hunt? He was one of the judges?—A. Yes.

Q. Did you ever vote before?—A. No.

Q. Is that totem pole down there? Is that yours?—A. Yes.

Q. What does that totem pole mean right up in front of your house?—A. Mean before no white man stop. My uncle used that.

Q. Do you use it—that totem pole?—A. Well, I use this. But, Mr. Cosgrove, I tell you totem pole, I tell you by and by.

Here is the testimony of George Keegan (record, p. 529). A portion of his testimony is as follows:

Q. You are perfectly sure, are you, that nobody talked with you who to vote for or told you you had a right to vote?—A. I never heard nothing about that before. It was our first time last year. They hear got right to vote like anybody.

Q. And you all came up and voted?—A. Yes.

Q. How many?—A. I don't know.

Q. A good many?—A. A good many—over 30, I think.

Q. Over 30?—A. Something like that. Over 30 in Ketchikan now. About 50 then.

Q. All voted?—A. Yes.

All of these 16 witnesses, except two, testified that they did not know what office Wickersham was running for, and never voted before.

Mr. HUDSPETH. Now, is it your contention that the Indians who voted at Ketchikan were not qualified to vote? Because a man in my State can vote who can not read and write, he can have his ticket made out for him.

Mr. GRIGSBY. I am dwelling on this as a counterclaim, not knowing the rule the committee is going to adopt about the Indians who live together in Indian villages, but Mr. Wickersham states—

Mr. HUDSPETH. I understand the contention was made by Mr. Wickersham that if they lived in tribal relations they are not qualified voters. I want to know if at his Ketchikan box it is your information that they live in tribal relations there and have a chief.

Mr. GRIGSBY. There is some evidence that the Hyda, Klawock, Juneau, and Douglas Indians have lived together in practically the same manner as the Indians at Ketchikan. The only distinction is that the city council of Ketchikan saw fit to tax them, but the city council of Juneau adopted the other method.

Mr. ELLIOTT. You say these Indians pay taxes?

Mr. GRIGSBY. They paid taxes in 1918. There is no evidence that they did before that. I do not know whether they did or not. I am about through on that proposition. The idea is that these Indians at Ketchikan are no more qualified than any other Indians, but more Indians voted for Wickersham than voted for Sulzer, throughout Alaska.

Mr. HUDSPETH. Let us get your idea clear on that. Not qualified by reason of what?

Mr. GRIGSBY. I have not stated, Mr. Hudspeth, that I maintain that these Indians were not qualified to vote.

Mr. HUDSPETH. Well, I want to see if I get you clear, Mr. Grigsby. Do you base it on the literacy test, on the tribal relations, or what do you base it on?

Mr. GRIGSBY. I do not base it. I simply say that if the mere fact that an Indian belonging to a tribe lives in an Indian village with other Indians belonging to that tribe disqualifies him, for the reason that he has not taken up his residence separate and apart from any tribe, then these Indians come within that class more clearly than any other Indians that have been testified about.

Mr. ELLIOTT. In other words, if the committee should hold that the Hyda and Klawock Indians are not entitled to vote, these others are not either?

Mr. GRIGSBY. These others are not either, and then when you compare their civilization and education, which is one of real tests of civilization, the Hyda Indians and the Klawock Indians are well educated, and can all read and write, and are intelligent, and these fellows at Kelchikau are absolutely ignorant.

There is one more I will comment on. George James, record, page 531, was examined as follows:

Q. You never voted before last fall?—A. No.

Q. Who told you you had a right to vote last fall?—A. Lots of people told me Wickersham going to help fishermen, what why I vote.

Q. All the Indians come up and voted last fall?—A. Yes.

Q. Lots of them?—A. Yes.

Q. All for Wickersham?—A. Yes.

The Indians examined at Ketchikan by myself and my attorneys are Charles Starish, Jimmie Starish, George Booth, Louie Hudson, George Johnson, and the others whose names are contained on page 188 of my brief, and the record pages of testimony are there shown.

Now, I will proceed briefly to discuss the special election. The contestant concedes that the special election law of 1915 was valid.

Mr. WICKERSHAM. No. You have insisted on that so frequently.

Mr. GRIGSBY. Well, you contradict me.

Mr. WICKERSHAM. Yes; I am contradicting you now.

Mr. GRIGSBY. But contestant says in his brief, on page 131, referring to the special election law of 1915, as follows:

That this limited power of the legislature to prescribe the time for holding a special election to fill a vacancy in the office of Delegate was both well understood and fairly exercised in accordance with the terms of the organic act is clearly demonstrated by the following act of the Legislature of Alaska, passed and approved on April 29, 1915:

And the act referred to provides for a special election to be called to fill a vacancy upon 30 days' notice given by the governor.

And then he says on page 140 of his brief:

That the power of the legislature to fix the time for holding the said special election to fill the said vacancy was exercised and exhausted by the passage and approval of the act of the legislature approved April 29, 1915.

So I claim those two statements of Mr. Wickersham as approving the act of 1915. Therefore he approved calling the election on 30 days' notice.

Now, the organic act says that the legislature shall have the right to fix the time for holding special elections. He said that power was well understood and fairly exercised by the act of 1915. Now, that act was defective, because it failed to provide the manner of giving this 30 days' notice; no method was prescribed for the creation of polling precincts; no method for providing for communicating the notice to the various election precincts; no method was provided for

the appointment of election judges, so you could not hold an election under the act of 1915, which he says was within the limited legislative authority of the legislature to pass. But they did, under the organic act, provide that an election should be held on 30 days' notice called by the governor. The act he complains of—the 1919 act—simply supplements the 1915 act by inserting those provisions which would make it operative. It provides a method for the governor to communicate this notice to the various divisions, and for the officers in the various divisions communicating it to the United States commissioners, the method of appointing the election judges, and all the other prerequisites of election are provided for which were necessary in order to hold an election.

Mr. Wickersham contends, after sanctioning the 30-day notice, that we dispensed with the 60-day requirement, the organization of the precinct, the 30-day notice to be issued by the commissioner, and the 30-day period prior to the election for the appointment of judges; but those provisions could not be complied with which the congressional act requires for general elections in case of an election called on 30 days' notice by the governor, and the organic act says that the legislature can fix the time for special elections. There is no limitation on it. Which law will fall—the one that says the legislature can fix the time or the old law containing the prerequisites for a general election? One of them must fall.

Now, the same question was raised in Illinois in relation to registration. It was held in *People v. Ohio Grove* (51 Ill., 191) that a provision requiring registration prior to an election was impliedly repealed as to special elections where the law governing the special election prescribed that it might be called on 10 days' notice. The registration, according to that case, had to take place either prior to the 10 days or, if it was impractical to have it take place where the election was called on 10 days' notice, while it was not expressly repealed, they held it did not apply to special elections, because it was inconsistent with the 10 days' notice.

Registration is a prerequisite of election, and so are these notices required by the congressional act; so that, when the Congress said that the legislature could absolutely fix the time for holding a special election, then impliedly any prior acts inconsistent with the absolute right to do that were repealed as to the special election.

Now, all the organic act says in relation to that is perfectly consistent with that view, and consistent with no other view. Section 17 of the organic act provides for a change in the time of election of a Delegate from August to November, and it says:

That the time for holding an election in said Territory for a Delegate from Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law or by the death, resignation, or incapacity of the person elected, may be prescribed by an act passed by the Legislature of the Territory of Alaska: *Provided further*, That when such election is held——

That is the proviso, "that when it is held." When is an election held? An election is held on election day. It is not held at any other time. The time for the election can be prescribed by the Legislature of Alaska, and "when such election is held it shall be governed in every respect by the laws passed by Congress governing such election." Now, is not that plain? There is no special election law in

the United States that is controlled by the same prerequisites as general elections. Why would Congress tell us up in the Territory of Alaska to go through all the prerequisites of a general election at a special election? In Washington State, where Mr. Wickersham lived, they call a special election on 25 days' notice. The only thing there is in the statute to prevent the prerequisites being changed, and the manner and the method of the canvass, is this section:

Provided, That when such election is held it shall be governed in every respect by the laws passed by Congress regarding such election.

We still have the same form of a ballot, the same hours for opening and closing the polls, the same duties of judges with reference to keeping the registration book, all the same provisions that are contained in the act of 1906 with respect to the conduct of election on election day.

That is all that must be done under the acts of Congress, and that is all that this organic act says has to be done. The canvass of the vote is not done on election day. The election is closed when the polls close. When the polls close the man who has received the most votes at that time is the man who is elected. Then they proceed to canvass the returns.

Mr. ELLIOTT. What power fixed the date for holding this special election?

Mr. GRIGSBY. The governor, by authority of the legislature.

Mr. ELLIOTT. Under the terms of the special act?

Mr. GRIGSBY. Of the legislature.

Mr. ELLIOTT. That is confined to the legislature?

Mr. GRIGSBY. Yes, sir; it was, by the authority of Congress.

Now, as to the canvass in this election, all the canvassing officers went ahead and canvassed the vote; that is, the election officers at the various precincts, the same as under the general election laws, but when it came to the transmission of the returns to the governor we provided that should be done by telegraph. That is not the conduct of the election on election day, and that is immaterial.

I have cited McCrary in my brief to the effect that whether the returns get in or whether they do not get in at all, is immaterial. That special election was legally called, and if I was legally elected on election day, and that is established to this committee, it does not make any difference what the canvassing board did, or whether they did anything or not.

Mr. CHINDBLOM. That would be so, would it not, without reference to the question whether the law, the previous law, for the canvassing of the returns of the election applied or not?

Mr. GRIGSBY. Absolutely; and that is the reason I said it was immaterial.

Mr. CHINDBLOM. If your proposition is true, it does not make any difference whether there has been a canvass or a return or proclamation or anything of that sort at the time when you get your certificate of election, if it subsequently transpires that you were elected?

Mr. GRIGSBY. If it subsequently transpires that I was elected.

Mr. CHINDBLOM. Then all those other failures or irregularities are cured. Then, I take it, it does not matter for the purpose of this case whether the provisions with reference to canvassing the returns subsequent to the election apply to a special election or not?

Mr. GRIGSBY. It would not make any difference, provided that proof is offered of my election, and the proof offered, in the first place, is the certificate of election. There is where the question comes in, whether any more proof is necessary.

I take it the organic act does not prevent the legislature from changing the method of transmitting the returns. That does not pertain to the conduct of the election on election day, and I contend that the organic act which extends the laws of Congress to the election, when it says that when such election is held it shall be governed by the laws of Congress, it refers to the conduct of the election on election day.

Mr. CHINDBLOM. I am wondering whether you are right about your interpretation of the meaning of the words "When such election is held." There is a proviso first that the time for holding an election to fill a vacancy shall be prescribed by the act of the legislature, and then it goes on and says, "Provided further, that when such election is held." Does not that mean if the election is held, when such election is held, when such special election occurs, that then, in all other respects, the election shall be governed by the laws passed by Congress governing elections?

Mr. GRIGSBY. Yes; I understand that is the opposite view of it; but I think the fair construction of the language is that the legislature has the absolute power to fix the time for holding this election; and the legislature, therefore, could pass an act and say that a special election shall occur, as a matter of law, 20 days after a vacancy is proclaimed by the governor—or 15 days. There is no limitation on their power to fix the time for holding a special election.

Supposing they did pass such an act, and the election is so held, then every prerequisite as to notice and division of precincts required by the congressional act with respect to general elections is inconsistent with that 20-day period of fixing the time.

Mr. CHINDBLOM. But are the provisions with reference to canvassing the votes inconsistent?

Mr. GRIGSBY. You are confining your remarks to the subsequent——

Mr. CHINDBLOM. Yes.

Mr. GRIGSBY. Well, as to the subsequent requirements of the statute, it rests simply on the ground that a fair construction of that proviso is that it refers to the election when held—the conduct of it on election day—and does not extend beyond that. That is the language. If they meant "in case of such special election," they should have said so. They say, "when such election is held"; that is, when it is called; when a special election is called, it shall be called at the time fixed by the legislature, and when it is held it shall be governed by the laws of Congress with respect to general elections. I think that left the canvassing board or the legislature free to change or amend the legislation of Congress; or, rather, pass new legislation with reference to the transmission of the returns, because the same reasons why a different procedure should be adopted with respect to special election than with respect to general elections apply both to the prerequisites and to the acts which must be done afterwards.

The special election is an emergency election designed to fill a vacancy. It is in evidence in this case that it takes four or five

months to get your returns in under the general election laws. A general election is held on November 5, and the man who is elected does not have to go into office until the following March. A special election is called to fill a vacancy that exists at the time. Therefore the time for holding it may be shortened and the notice can be shortened, and necessarily the construction of the statute would follow the necessities of such an occasion, and if to follow the general provisions with regard to general elections would result in not getting the vacancy filled, all that militates against the idea that such after-requisites apply to special elections.

Mr. CHINDBLOM. Except the fact that Congress may fix the conditions under which special elections may be held, as well as the conditions under which a general election may be held, and your argument as to any inconvenience or injustice falls when you consider the proposition that Congress could even dispense entirely with the holding of an election.

Mr. GRIGSBY. When the language is plain and when there is room for two constructions you can take the construction which would be consistent with the vacancy being filled, rather than taking the one which would be consistent with the term having expired, or the session having adjourned before you could get the elected Member in. You take the construction consistent with the purpose of calling a special election, rather than one inconsistent with it; whereas if Congress said right out that the canvass must be the same as in regular elections, that would settle it; but here I contend that this language refers only to the procedure on election day.

Mr. CHINDBLOM. Well, is the canvass of the result and the publication of the result, the proclamation of the result, a part of the election?

Mr. GRIGSBY. No; because it can be dispensed with and still the election be valid and sufficient to seat the candidate.

The question is who was elected when the polls closed. If a precinct decisive of the election did not send any returns in at all, and they never were canvassed, you could come down here before a committee of Congress, and if you proved you got the votes, you would be seated. The election ends on election day. Anything after that is a method prescribed by statute for ascertaining the result of the election which has taken place.

Mr. CHINDBLOM. But suppose John Jones received a certificate of his election and came down and presented it to Congress, and then when the canvass had been completed and the returns all made and tabulated, the canvassing board should find that Samuel Smith was elected, then what position would Samuel Smith and John Jones be in respectively?

Mr. GRIGSBY. You mean if John Jones came down here and asked for a seat in Congress with nothing to show for it?

Mr. CHINDBLOM. No; he would get the certificate upon such general information as existed immediately following the special election, but when the canvass was subsequently completed—and I suppose there would be a completion of the canvass some time?

Mr. GRIGSBY. Yes.

Mr. CHINDBLOM. When the canvass was subsequently completed, it was found that Smith was elected?

Mr. HUDSPETH. Then it would be up to Congress to unseat Mr. John Jones, and to seat the other gentleman.

Mr. GRIGSBY. It would be up to Congress to find out who was elected.

Mr. CHINDBLOM. Then you have a law framed so that it very often results in confusion and in the possibility of two men claiming the election?

Mr. HUDSPETH. That is a condition we have right here before us to-day.

Mr. CHINDBLOM. No; this is not by reason of the enactment of the law.

Mr. ELLIOTT. I have found out that a certificate of election does not amount to anything if not backed up by the votes. I have found that out to my sorrow.

Mr. HUDSPETH. It has to be backed up by the votes.

Mr. GRIGSBY. Well, this certificate is issued on telegraphic returns, and the law is such that the certificate can not be issued until a sufficient return is in, until the missing returns, if all cast for the other candidate, as evidenced by the previous election, are not enough to change the result. If that law is followed by the canvassing board, they could not make a mistake in issuing the certificate.

Mr. CHINDBLOM. Which law is that?

Mr. GRIGSBY. That is the Territorial law.

Mr. CHINDBLOM. That is the Territorial law?

Mr. GRIGSBY. We are talking about whether the situation you mentioned could militate against this construction.

Mr. CHINDBLOM. Yes.

Mr. GRIGSBY. If it does, it is the fault of Congress for passing such an act. If they confine their act of 1906 and the operation thereof to the conduct of election on election day and leave it to the legislature to prescribe the method of canvass and the legislature passes an act which might result in that situation, it does not militate against that construction. You can not assume the legislature will pass a defective act as to canvassing the returns, even though Congress gives them authority to do so. You are simply finding fault with this act that it passed. Suppose they passed a perfect act, one by which by no possibility could there be a certificate issued to two candidates, then you go back and you read the statutes and your construction of it is not changed by the kind of act they passed.

Mr. CHINDBLOM. But in an ordinary election contest, presumably, when a certificate of election is issued, anyone else claiming the election than the one who got the certificate brings the contest. In the case I suggested as possible, while an election certificate had been issued to the first man and he appeared on the face of the first returns to have been elected, would it not be the duty of the canvassing board afterwards, when all the returns were in, and all the votes were tabulated, to issue an election certificate to the other man?

Mr. HUDSPETH. I take it it would be the duty of the authority to ascertain before it ever issued the first certificate that the man had been elected.

Mr. GRIGSBY. There was such a case in Wisconsin. I recall a case where two certificates of election were issued under the State law. I do not think that the possibility of what kind of an act the legisla-

ture might pass in regard to telegraphic returns affects the construction of the organic act. But supposing you hold that Congress intended that the legislature should have the right to prescribe the manner and method of the canvass, and then they passed a defective act or one that might result in one, two or more certificates?

Mr. CHINDBLOM. If it was clear that they had authority, then, of course, the question would not arise, but where the construction of the statute is in doubt, it is a rule of construction, as I recall it, to take that construction which has the less absurdity, or which will not create a confusing situation.

Mr. GRIGSBY. Well, I can not conceive how you can construe this statute, and what power it confers on the legislature, by what any legislature might do. Suppose they were given the express power to amend the manner and method of canvass, and then went ahead and passed a ridiculous law that might result in some absurd situations, it would not affect the validity of their act. If they are given the implied power to do it, what they might pass does not affect the interpretation and construction of this act, and it is not to be presumed that that situation is going to occur. They are simply taking the telegraphic reports of the clerks of the court, not of the precinct officers, the clerks of the court of the various divisions, which are the certified copies of the certificates of election of the various precincts which are filed in his office. That is what he telegraphs in. That is the safest method. After the duplicate certificates go to the clerk of the court, they are telegraphed in by him in his official capacity, and then an election certificate is issued on that. It is almost impossible that a situation could arise where the mail returns coming in afterwards could change the result.

Mr. CHINDBLOM. Is there a subsequent canvass?

Mr. GRIGSBY. Under the law, there is none provided for.

Mr. CHINDBLOM. I understood you to say that these telegraphic and telephonic returns are merely preliminary, and that subsequent to them there is a canvass made.

Mr. GRIGSBY. No; the act on the subject of returns, that is the special election act, I have not read for so long that I forget the language, but I had better read that to you.

Mr. ELLIOTT. It may be good all right, but I never saw anything like it before.

Mr. CHINDBLOM. I can see that the legislature might have full authority itself to substitute the sending of returns by telegraph and telephone for the sending of returns on typewritten or pen-written sheets of paper; they might have the right to do that, but there would be only one canvass, and that canvass would be based altogether upon the telegraphic and telephonic returns. There would not be any subsequent canvass which would make it possible for a second certificate to issue upon a second canvass.

Mr. GRIGSBY. I am probably in fault in not calling attention to the statute, and to the fact that there is no possibility of a second canvass or a second certificate. The canvass does not have to be on telegraphic returns. Here is the law [reading]:

The election when held shall be governed by the laws of Congress regulating general elections in the Territory of Alaska, except as otherwise provided by this act—

Now, that "otherwise provided" takes in woman suffrage, which was by act of the legislature, under authority of the organic act—

Provided, That in canvassing the returns the canvassing board may, in their discretion, accept telegraphic returns from the clerk of the court of each division, and that a certificate of election may issue prior to the receipt of the returns from all the election precincts, where it is apparent that the votes cast in the missing precincts will not change the result.

Mr. O'CONNOR. They guess at it?

Mr. GRIGSBY. No; it has to be apparent.

But here is another proposition, that these telegraphic returns come from the clerk of the court of each division. If you wait for the actual returns to come in, you have got to wait from four to five months, according to the evidence in this case. In my case they waited until at least the total vote cast in 1916 in missing precincts was less than my plurality. Here I carried, with three or four exceptions, practically every precinct in Alaska that held an election. They waited until the total vote in the missing precincts which had been cast two years before was less than my plurality until they knew that the vote would not change the result, if all cast for my opponent. Of course, if they had that authority, it does not make any difference, as you say. The wisdom of the act can not be questioned, but the section means that having once canvassed and issued a certificate, they had no authority to issue another certificate to another man. They can take the telegraphic returns, or they can take the actual returns or the telephonic returns, but whatever they do take, that is the canvass, under his section, so that a situation could not exist that you suggested.

I think, unless there are some questions, gentlemen, I have nothing further to say. I have gone into this quite fully in my brief, and will leave the case with you.

(Whereupon the committee adjourned until Tuesday, April 6, 1920, at 2 o'clock p. m.)

COMMITTEE ON ELECTIONS No. 3.

HOUSE OF REPRESENTATIVES,

Washington, D. C., Tuesday, April 6, 1920.

The committee, at 2 o'clock p. m. this day, met. A quorum was present, Hon. Cassius C. Dowell (chairman) presiding.

Mr. GRIGSBY. Mr. Chairman, I wish to withdraw the objection I made yesterday to the ballots and records which are in the hands of the Clerk of the House and which purport to be the original ballots and records of the November 5, 1918, election for Delegate to Congress from the Territory of Alaska.

The CHAIRMAN. Mr. Wickersham, you may proceed.

CLOSING ARGUMENT OF MR. JAMES WICKERSHAM, CONTESTANT.

Mr. WICKERSHAM. Mr. Chairman, I am going to try to confine myself entirely to answering some of the points made by Mr. Grigsby in his argument. I have no additional evidence that I want to bring before the committee, so that I am not going to try to testify any further than one does sometimes without thinking, but I am going to

try to confine myself entirely to answering the argument made by Mr. Grigsby, so that the committee can get as many of my ideas about his objections and what he said as possible.

First, I want to call the attention of the committee to one objection that Mr. Grigsby makes, and has continually made, that much of my testimony is not properly before this committee, because it was taken prior to the passage of resolution No. 105. There is some testimony in the record which I put in there of an effort to get the testimony of these soldiers at Valdez on May 14, prior to the passage of that resolution of July 28.

The CHAIRMAN. None of the record that you have here, as I understand it, was taken before the passage of that resolution?

Mr. WICKERSHAM. Except this, that all of that was introduced. The document which was printed containing all of that ex parte matter was introduced in this record, and some of it was introduced specially in the record, especially that portion.

The CHAIRMAN. Was that printed?

Mr. WICKERSHAM. Yes; especially that portion which related to the effort which we made to take the depositions of these soldiers at Valdez on May 14.

Mr. CHINDBLOM. Was objection made to that?

Mr. WICKERSHAM. To its introduction?

Mr. CHINDBLOM. To its introduction.

Mr. WICKERSHAM. I think not.

The CHAIRMAN. Let me get you clearly. Are you relying——

Mr. WICKERSHAM. I will state what I am relying on. Mr. Grigsby declares that my notice of contest of May 3, 1919, was premature and illegal, and that my efforts to take the testimony at Valdez on the notice of appearance of Mr. Diamond, who has since represented him all the time, was without authority of law, but that notice of contest of May 3, 1919, was received by the Clerk of the House on May 16, and transmitted to the House on June 2, and by the House ordered to be referred to the Committee on Elections No. 3, on that day, and it is printed as House Document No. 74. That document is my notice of contest. It is the notice of contest upon which the case is being tried. It was approved and rendered valid in every respect by resolution No. 105, and it is upon that that we are trying this case.

It is true that subsequently I served an additional notice upon Mr. Grigsby so as to bring his election of June 3 into question here, and with that I served upon him a copy of this House Document No. 74, so that in both aspects that matter is the basis of this investigation, and it is made valid in every respect by resolution No. 105, and also by the personal service upon Mr. Grigsby, and there is no objection made, of course, to trying the case as broadly as it is set forth in Document No. 74, and in the special notice which I served upon him at a subsequent date.

The CHAIRMAN. But upon testimony taken since the passage of the resolution?

Mr. WICKERSHAM. Yes; but in respect to that very matter, on May 14 I undertook to take these depositions of the soldiers at Valdez, and that evidence was introduced in the record, and is in the record very fully, so I simply call that to the attention of the committee, be-

cause I think the whole matter is made valid and legal by the passage of resolution No. 105, and all that matter is before the committee fairly.

Now, Mr. Chairman, this is not a prosecution for crime. It is not a case where a man must be proven to be guilty beyond a reasonable doubt before you can find him guilty of a crime. We are here trying a civil suit. We are here trying a civil suit under the ordinary rules of evidence relating to a civil suit, and having had all this very full notice, and having brought this evidence before the committee in a proper way subsequent to resolution 105, it seems to me that there can be no question but what the committee is justified in taking it into consideration.

Mr. Grigsby has said that he did not stand upon the affidavit of Odell, the affidavit which he put in his brief, and it is not in the record in any other place except in his brief. Well, I think he is right about that. I think those affidavits that he put in his brief ought not to have been there.

Mr. GRIGSBY. I did not say I did not stand on it, Mr. Wickersham.

Mr. WICKERSHAM. Then I misunderstood you. Then he does stand on that. Now, all that evidence in his brief was not taken upon any notice to me. I had no notice of it at all, and knew nothing of it until I discovered it, first, that part that he read here before the committee, and second in his brief. It is not in the record anywhere. You may search the record and the depositions fully, and you will not find anything about it in that record anywhere.

I have made some points, and been very careful to try to confine myself to the very matters of interest presented by Mr. Grigsby. First, he undertook to convince this committee with respect to the power of the legislature, stating that the legislature of Alaska had authority to alter, amend, modify, and repeal a very wide range of laws in force in Alaska, and he did not put any block in the wheels anywhere, and might mislead this committee into thinking that the legislature had somewhere authority given to it by the act of Congress to even repeal the election laws passed by Congress for holding elections in the territory of Alaska.

I want to call attention to that for a moment. In the act of August 24, 1912, found at page 512, 37 Stats., is this language which is referred to. In section 3 of that act it is provided:

That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; that all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by act of Congress.

So that with respect to the establishment of the executive and judicial bodies for Alaska, the legislature, of course, has no authority, because that specifically excludes them. Then it goes on to provide:

That except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature.

And Mr. Grigsby made a very wild argument about that provision, and I fear it may have mislead some of the members of the committee. I drew this bill myself, and if there were any amendments made in it at any time, and there were some, I was so conversant with all

those amendments that I know what each and every one of them meant, and I have a very full information about why those amendments were put in.

Now, it is provided:

Except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature: *Provided*, That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws of the United States, or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska.

And then it goes on and provides for some other special laws which the legislature shall not have any authority to alter, amend, modify, or repeal. Now, section 5 of this act provides:

That the first election for members of the Legislature of Alaska shall be held on the Tuesday next after the first Monday in November, 1912, and all subsequent elections for the election of such members shall be held on the Tuesday next after the first Monday in November biennially thereafter; that the qualifications of electors, the regulations governing the creation of voting precincts, the appointment and qualifications of election officers, the supervision of elections, the giving of notices thereof, the forms of ballots, the register of votes, the challenging of voters, and the returns and the canvass of the returns of the result of all such elections for members of the Legislature shall be the same as those prescribed in the act of Congress entitled, "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," approved May 7, 1906, and all the provisions of said act which are applicable are extended to said elections for members of the legislature, and shall govern the same, and the canvassing board created by said act shall canvass the returns of such elections and issue certificates of election to each member elected to the said legislature; and all the penal provisions contained in section 15 of the said act shall apply to elections for members of the legislature as fully as they now apply to elections for Delegate from Alaska to the House of Representatives.

The purpose of that was to provide, as it does specifically provide, that all elections for members of the Territorial Legislature in Alaska shall be held under the provisions of the act of May 7, 1906, which shall govern the same, so that there is a cast iron, mandatory rule laid down by Congress that the election for members of the legislature shall be governed by the act of May 7, 1906, and it is perfectly clear that the Territorial Legislature has no authority in any way to change any of the provisions of the act of 1906 relating to elections for members of the legislature. But Mr. Grigsby rather left the impression that somewhere in this first clause there is a loophole giving the Legislature of Alaska authority to change the election laws relating to the election of Delegate to Congress, and it did that in this special act, and changed the law of Congress. He gets up here and makes a long argument that they had the right to change all the laws relating to the holding of that election except those that apply on the election day itself.

Section 17 of this act I do not think is open to any construction, because it was intended by section 5 to prevent the Legislature of Alaska from having any power to alter, amend, modify, or repeal the election laws of Alaska relating to the election of the legislature, and section 17 was intended by Congress—and you will find it if you will get the report of the committee which reported this bill—to provide that those laws relating to the election of Delegate should not be changed by the Territorial Legislature.

Section 17 provides:

That after the year 1912, the election for Delegate from the Territory of Alaska, provided by "An act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska." approved May 7, 1906, shall be held on the Tuesday next after the first Monday in November in the year 1914, and every second year thereafter on the said Tuesday next after the first Monday in November, and all of the provisions of the aforesaid act shall continue to be in full force and effect and shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein.

Now, if any member of this committee can find any loophole there which gives the Territorial legislature in Alaska any authority to change those laws, then you have got to forcibly disrupt the language of the act passed by Congress.

Then the law goes on as follows:

Provided, That the time for holding an election in said Territory for Delegate in Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by an act passed by the Legislature of the Territory of Alaska: *Provided further*, That when such election is held it shall be governed in every respect by the laws passed by Congress governing such election.

Those two clauses, it seems to me, are so clear and so positive that it was intended by Congress and by the committee that reported this bill to take away from the Territorial legislature any power to change the election laws of the Territory of Alaska.

Mr. Chairman, if they have authority to alter, amend, or modify these laws in any respect except by merely fixing the time when they may hold a special election; they may repeal the laws, because the act then would have turned over the Territorial legislature in Alaska the authority to repeal the laws and take away from the people of Alaska their right to elect a Delegate to Congress. Of course, that was not intended, and it was not intended by the framers of this act and the committee to give that legislative authority any power over these election laws. If you gave it that authority, they could not only destroy the Territorial Legislature of Alaska but they could destroy the office of Delegate from Alaska, and prevent one from being elected.

Mr. GRIGSBY. How about the legislatures of the other Territories?

Mr. WICKERSHAM. That has not anything to do with it. There are no two Territories in the United States that ever had the same authority. I repeat that there were no two Territorial legislatures in the United States that ever had the same authority.

Mr. CHINDBLOM. Did the other Territorial legislatures have that authority; do you know?

Mr. WICKERSHAM. No.

Mr. CHINDBLOM. To change and amend a law with reference to the election of delegates to Congress?

Mr. WICKERSHAM. No. I looked that up, and I annotated all those laws very fully for the committee. I made a very full and complete annotation of all the laws theretofore passed by Congress relating to the local government and the organization of the legislatures and the election of delegates, etc., and I ascertained that no such a law had ever been passed, so that there can not be any question about it. No.

Territorial legislature ever had any authority over the election of delegates in a Territory. They did have some authority, and there was a well defined purpose in putting that clause in section 3 of this act, giving the legislature some authority to repeal the acts of Congress, and for this reason, that Alaska was created a Territory by the act of 1884, but at that time it had no legislature. The act of 1884 provided for the appointment of a governor and the appointment of judges, in other words for the executive and judicial departments, and the act of 1884 contained a number of laws relating especially to Alaska in a local way, and it did more.

In a section of the act of 1884 it especially extended all the laws of the State of Oregon to Alaska. That is to say, all of the laws relating to civil procedure and criminal procedure were extended by the act of 1884 to Alaska, so that while we were a territory, but before we had a Territorial legislature, we had a complete system of laws borrowed from the State of Oregon and bodily extended by several sections of the act of 1884 to Alaska.

Now, that is not unusual. When Oregon was first created a territory about 1848 the act of Congress creating Oregon Territory extended the laws of Iowa bodily, so that when Oregon was created a Territory it began its existence with a code of laws provided by borrowing the codes of Iowa, and extending them to Oregon, as in the act of 1884 the laws of Oregon were borrowed and extended to Alaska.

Now, that condition existed up until 1899, and in 1899 Congress passed what we call the criminal code of Alaska. Mind you, we did not have any legislature in 1899, but Congress passed a very extensive criminal code and a code of criminal procedure for the Territory of Alaska. We had our courts established by the act of 1884, so that by the act of March 3, 1899—and you will find it in the Compiled Laws of Alaska, 1913—a criminal code and a code of criminal procedure were passed by Congress especially applicable to Alaska.

We did not then have any legislative body, but we did have a territorial form of government and an executive department and a judicial department and a court of criminal laws and a code of criminal procedure passed by Congress.

On June 6, 1900, Congress passed another act establishing a civil code and a code of civil procedure, which are contained in the Compiled Laws of Alaska, 1913, before you. By the act of June 6, 1900, then, we had a civil code and a code of civil procedure extended to Alaska, so that after June 6, 1900, we had a governor and a complete executive department, we had a judicial department, and we had four judges, four judicial divisions, and four courts, and all the paraphernalia of the courts, but no legislature, and it was not until 1912 that we had a legislature, although during all these years we had these codes of laws passed by Congress, and while I can not take it up myself in the brief time that you have given me to answer, a careful examination of this act and a careful examination of those laws will disclose—and Mr. Grigsby knows it, and everybody else knows it who is conversant with the situation in Alaska—that the purpose of section 3 there was to give the Territorial Legislature of Alaska, the authority to alter, amend, modify, and repeal the Oregon laws which were extended to us by the act of 1884, the

criminal code as extended to the Territory of Alaska by the act of 1899, and the civil code as extended to Alaska by the act of June 6, 1900.

I was appointed United States district judge, or district judge in Alaska on June 6, 1900, and went to Alaska and have been there ever since. I have practiced in the courts there, and I am thoroughly conversant with the situation, and so is Mr. Grigsby, and he knows, and I know, and you gentlemen will know if you examine this law, that the only purpose in putting that provision in there, and the only effect that it has is to give the Territory of Alaska authority to alter, amend, modify, and repeal the Oregon laws, the code of criminal procedure and the code of civil procedure, and a few other small acts passed by Congress giving the courts in Alaska certain other local jurisdiction.

Mr. O'CONNOR. Did you say that you wrote that Congressional Act?

Mr. WICKERSHAM. The act of 1912; yes.

Mr. O'CONNOR. When was the Alaska legislative act passed?

Mr. WICKERSHAM. That was the act of August 24, 1912, creating the Legislature of Alaska.

Mr. O'CONNOR. 1912?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. Was that the act you wrote?

Mr. WICKERSHAM. That was the act I wrote; yes.

Mr. O'CONNOR. Is that the act governing the election of 1916?

Mr. WICKERSHAM. No; the act governing the election is the act of 1906. The election law of 1906 provided for the election of a Delegate to Congress, which I did not write.

Mr. O'CONNOR. But you wrote the territorial act?

Mr. WICKERSHAM. I wrote the territorial law.

Mr. O'CONNOR. Was the election of 1916 conducted under this territorial act which you wrote?

Mr. WICKERSHAM. Under that, and under the act of May 7, 1906; yes. The act of 1912 merely extending the act of 1906 to the election of Territorial legislators, and also changed the date for holding the election for delegate from Alaska, and providing that when the election is held it shall be held under the act of 1906 specifically. There is not any question about it at all, and it is only necessary for you gentlemen to read that act to understand it, if you will, because Mr. Grigsby knows it does just as I do.

Mr. Grigsby also says that I am trying to mislead the committee, and it is not unusual for attorneys who are arguing a case where there is a good deal of interest, as there is in this case between him and me both, to present his side just as forcefully as he can, and at times I think rather too forcefully.

I am only going to present this one matter to you, because Mr. Grigsby has mentioned it, and this matter, I think, is typical of all his other allegations that I am trying to mislead the committee. He made this point, that I have made an inaccurate statement in my brief at page 46, and I hope you will look at page 46 of my brief so that you will see exactly what this misstatement is. He went to great extremes to prove that I was misleading you. With respect to this Nushagak matter, he said that I said on pages 45 and 46 that French,

the commissioner at Choggiung, failed and refused to perform these jurisdictional acts in Nushagak, and that he did not appoint for the Nushagak voting precinct any officers there, and on the next page he says that I say that these men at Nushagak were reenforced by a number of settlers formerly residing in Choggiung precinct, and he read the evidence of Nash at length to show you that there was not a word in the testimony of Nash about anybody being reenforced in Nushagak, and when I said in my brief, as I do, that these men at Nushagak would have cast a big vote because they were reenforced by people who had come over from Choggiung precinct that I was misleading the committee willfully; and he said you ought not to believe anything I said thereafter, because I had mislead you.

If I did say, as I have said here, that these people at Nushagak were reenforced by a number of settlers formerly residing in Choggiung precinct—and I did it out of a superabundance of enthusiasm in order to present my case to the best advantage—it would not be very material, because it is not a point in issue in this case; there is nothing in this case with respect to that particular matter. But I have tried to be very accurate in my statements in this brief, and I beg this committee to understand that I think this brief is accurate and is very full and very complete upon the few points that I have tried to present to you, and I offer it to you as accurate, and I was somewhat annoyed that Mr. Grigsby should pick out a little thing like that and try to convict me of inaccuracy upon an immaterial matter, and then extend it to material questions and say that because I was inaccurate in this one little thing therefore I was inaccurate generally and that you ought not to take too much stock in what I said.

Now, he read the testimony of Nash, and there was not a word in his evidence about any reenforcements from Nushagak. He did not read all of Mr. Nash's testimony with understanding. I did read most of it——

Mr. GRIGSBY. I read every word of it.

Mr. WICKERSHAM. I know you did, but not, as I said, with understanding.

Mr. GRIGSBY. Of course, I might not be able to understand it.

Mr. WICKERSHAM. People may read a thing and still not read it with understanding. Now, I call your attention to page 80 of the record.

Mr. CHINDBLOM. My recollection is that he made more of a point out of the claim that there were no election officers appointed in Nushagak.

Mr. WICKERSHAM. Yes; and I am going to answer that.

Mr. CHINDBLOM. He made more than that out of the matter of reinforcements, as I recall it.

Mr. WICKERSHAM. There was quite a good deal on that. On page 80 of this record is a list of names said by the Witness Nash to be voters in the Nushagak precinct, and at the top of the right-hand column is the name of Louis Hauser and wife; and Mr. Nash wrote that list out in longhand, and the gentleman who acted as stenographer or copyist got Louis Hanson's name wrong, that is all, and in my list of witnesses I have got it stated correctly, and in the original

which is before this committee, it is stated correctly. His name is Louis Hanson and wife.

Mr. GRIGSBY. In the list you made?

Mr. WICKERSHAM. The list I made.

Mr. GRIGSBY. For the use of the committee?

Mr. WICKERSHAM. For the use of the committee. I have it Louis Hanson. In the first column of the list is Blank Ostertrum and wife. In the original, which is before the committee, it is Adolph Osterhaus and wife, and Adolph Osterhaus and Louis Hanson are shown by the original record to be residents of Nushagak precinct at the time that Nash gave this testimony and on election day.

Now, if you will take the record which Mr. Grigsby has read, and which I think to some extent is before this committee, on the election of 1916, you will find that Louis Hanson and Adolph Osterhaus were election officers in Choggiung precinct in 1916. They resided in Choggiung precinct in 1916, and they signed the official election returns for that year—in 1916.

Now, you have before you the original returns from Choggiung of 1918, and you will not find Louis Hanson or Adolph Osterhaus in the record of the election returns of 1918, because they had in the meantime gone over to the other place, and Nash testified to it fully right here, so that, without taking any more time, I call your attention to the fact that that was not an inaccurate statement, and although it proved to be an immaterial one, it was perfectly accurate. I know Louis Hanson and I know Osterhaus, and I have had a good deal of correspondence with them about this matter, and I undertook to get the depositions of those people at Nushagak through them, but the flu struck them just before my communication did, and Mr. Osterhaus's wife died, and his children died, and many died in that community, and the result was that they paid no attention to my efforts, and I did not get their depositions.

I can testify to that, of course, just like Mr. Grigsby does very frequently. It is not in the record, but these other matters are in the record, and they are before you, and they show I was not inaccurate in making that statement. I am just calling that matter up as an example of the other things which Mr. Grigsby stated about my testimony in this case. He said he did not know much about this case. He said he was here as delegate looking after things for Alaska, and the result was he had not given much attention to this case, and I can well believe it, because he omitted a great many things that he ought to have done, and he said a great many things in criticism of me which he does not know anything about. If he knew about those things he would not do it. He is not trying particularly to mislead you, but he just simply does not know, that is all.

Now, I will take up one of the other cases. He says now that French did not appoint the election officers, or he says that I say that French did not appoint these officers in Nushagak, and I did say it at page 45 of my brief—

but failed and refused to perform these jurisdictional acts in Nushagak; that he received these blank official election books and records in July; that French was over in the Nushagak precinct several times between that date and November 5, 1918, election day, and as late as October 22, but did not appoint election officers or deliver any blank election supplies, etc., there, nor cause or permit it to be done. Finally, just before election day, French delivered the

supplies to a registered German alien and then they disappeared. "The supplies were never taken over."

He says Commissioner French is a Democrat, appointed by the Democratic judge of the third division; that he was a violent partisan opponent of contestant, and engaged in electioneering for Mr. Sulzer. French was not only commissioner in the Dillingham recording district, but also ex officio probate judge, justice of the peace, recorder, and coroner, and also superintendent of the Indian school maintained there by the United States Board of Education, and the doctor for the Indians, under employment from the bureau.

French appointed the election officers at Choggiung—J. C. Lowe, Charles Nelson, and a man named Ownby, a jail guard—as judges of election, but did not appoint any for Nushagak voting precinct, which he had created across the river. All these officials at Choggiung were supporting Mr. Sulzer, the Democratic candidate, with French, and were unfriendly to this contestant.

I think the evidence on that matter is perfectly clear.

Mr. GRIGSBY. Read some of it that says he failed.

Mr. WICKERSHAM. Mr. Grigsby declares that there is no evidence that French did not appoint the election officers. Nash testified to that, and you will remember the testimony, because you have heard it quoted to you fully. Nash says there were no papers delivered over there; that there were no orders; there was nothing delivered there by French upon which these people could hold the election. That is the only way they could get that information. The only way that authority could come to these people in Nushagak would be by the orders—the official orders—of French. And French, it appears, was over there several times in October, and as late as the 22d day of October, and did not leave any documents of any kind to enable those people to hold the election, and the point is this, that by reason of his failure to leave those documents there, by reason of his failure to deliver those documents, by reason of his failure to notify these people by the delivery of the documents, the other conclusion follows, as a matter of law, not as a matter of fact, but as a matter of law.

Section 5 of the act of May 7, 1906, provides for the order creating the precincts 60 days before the election.

Mr. GRIGSBY. Excuse me, Judge, but Nash testified that they did have notice of the election across the river in Nushagak.

Mr. WICKERSHAM. But that order had to be made 60 days before the election. I have got the notice. The original notice is here.

Section 5 of the act of May 7, 1906, providing for the election of a Delegate to the House of Representatives from the Territory of Alaska, section 369 of the compiled laws of Alaska, provides as follows:

That all of the territory in each recording district now existing or hereafter created situate outside of an incorporated town shall, for the purposes of this act, constitute one election district; that in each year in which a Delegate is to be elected the commissioner in each of said election districts shall, at least 30 days before the date of said first election, and at least 60 days before the date of each subsequent election, issue an order and notice, signed by him and entered in his records in a book to be kept by him for that purpose, in which said order and notice he shall—

First. Divide his election district into such number of voting precincts as may, in his judgment, be necessary or convenient, defining the boundaries of each precinct * * *; *Provided, however,* That no such voting precinct shall be established with less than 30 qualified voters resident therein; that the precincts established as aforesaid shall remain as permanent precincts for all subsequent elections, unless discontinued or changed by order of the commissioner of that district.

And this must be done 60 days before the election.

The CHAIRMAN. Your claim is that that is mandatory?

Mr. WICKERSHAM. Absolutely. Let us concede that was done, because that is the section that requires the giving of notice of the laying out of the precincts, etc., and in the second paragraph he is required to give notice of said election, the second paragraph reading as follows:

Give notice of said election, specifying in said notice, among other things, the date of such election, the boundary of the voting precincts as established, the location of the polling place in the precinct, and the hours between which said polling places will be open.

That was done, and those notices were posted 60 days before, and they are always posted 60 days before, if the law is complied with, and these people saw them; but there is another notice to be given 30 days before the holding of the election, and that is the notice that was not given.

The fourth paragraph of this section provides:

That at least 30 days prior to the date of the holding of such election the commissioner shall select, notify, and appoint from among the qualified electors in each voting precinct three judges of election for said precinct, not more than two of whom shall be of the same political party. Said commissioner shall notify all of said judges of election of their appointment as such, so that each and all of them shall receive said notice at least 10 days before the date of the election.

Now, there is where he failed. He did not appoint them and did not select them; he did not notify them so that they would receive that notice at least 10 days before election, and there is where Nash's testimony is complete in this case, because he testifies from his own knowledge and from the circumstances that those notices were not delivered. They had to be delivered in writing; there is no escape from that. So it is altogether inaccurate to say that I made a mistake when I say that the evidence here shows clearly that these officers were not appointed in Nushagak.

They had to be appointed by an order of this commissioner, and he had to notify each one of them in writing, and he did not do it. That is all there is to that. I say to this committee now that the evidence is full and complete and unanswerable in Nash's testimony that no such notice was given, although Commissioner French was over there several times in the month of October and the election was held on November 5, and he absolutely declined, absolutely refrained, we will say, from doing it, because Nash says he was there as late as the 22d day of October, only a few days before the election, and that those notices were not given.

Mr. CHINDBLOM. You say there is affirmative evidence in the record that the notices to the election officials were not given?

Mr. WICKERSHAM. Yes, sir; Nash testified to that positively. Those were the papers that Nash was talking about all the time.

Mr. GRIGSBY. What was that last statement?

Mr. WICKERSHAM. I say those were the papers that Nash was talking about; those were the documents which he did not deliver; those were the documents that were necessary to be delivered within the 30 days, or within the 10 days preceding the election. They had to be delivered at least 10 days prior to the election.

Mr. CHINDBLOM. You think those notices were a part of the supplies?

Mr. WICKERSHAM. Yes.

Mr. GRIGSBY. That came down on the Nome boat in July?

The CHAIRMAN. As I understand you, Judge, you are contending that this is a mandatory statute, and that the commissioner did not comply with the law, and your claim is that certain voters in this precinct where the election was not held were not permitted to vote?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. Now, your contention is that in the other part of the division where the election was called, by reason of the fact that the election was not called in this precinct, the entire election in that precinct is void?

Mr. WICKERSHAM. The whole matter is void, because of the fraud on the part of the election officer in refusing to comply with the law in his jurisdiction.

The CHAIRMAN. You are not contending that those who were deprived of their votes in the precinct where the election was not held should be counted for the ones that it is shown in the evidence they intended to vote for?

Mr. WICKERSHAM. Mr. Grigsby yesterday read a very persuasive argument along that line.

The CHAIRMAN. But I am trying to get your view of these two precincts.

Mr. WICKERSHAM. Well, as I have said to you in my brief, and I refer all the time to my brief for my view of the matter, because I was very careful in writing it, either the committee should allow me the votes of those people who were disfranchised, and who, the evidence shows, would have voted for me, or you should throw out the whole district in which this man perpetrated that fraud.

The CHAIRMAN. But there is a certain law on the subject, and what I think we would like to get at is your view of the law, and what we are required to do under the state of fact you present.

Mr. WICKERSHAM. I cited a large number of authorities to you to show that wherever in any precinct the officials refused to comply with the law the courts have uniformly held that the election in the whole district was void, and that would apply particularly in the Forty-mile precinct, where frauds were committed also. And Mr. Grigsby undertook yesterday to show you that in the Klawok (Craig) precinct, where 28 Indians, in 1916, were not permitted to vote, that they ought to have been allowed to vote and that because they were not allowed to vote, although they did not offer their votes, and did not come to the polls and their names were not in the record anywhere, and they are only referred to as 28 Indians, they ought to have been counted in 1916 for Mr. Sulzer.

Now, if that is the rule, and I think fairly that is what Mr. Grigsby stated to you yesterday, then I ought to have the votes that Mr. Nash says he knows would have been cast for me, and they would have been cast for me without any question, because I can testify to that matter myself.

Mr. CHINDBLOM. How were the notices to the election officials throughout Alaska generally sent to those officials by the commissioners in the recording districts?

Mr. WICKERSHAM. Sometimes by mail and sometimes personal delivery, because the law provides that he shall select, notify, and appoint the election officers, and then the next clause is that he shall

notify all of the said judges of election. He has to select them, which is a judicial function. He does it by order invariably also.

Mr. CHINDBLOM. Is it his duty to prepare those notices himself?

Mr. WICKERSHAM. Yes. It is made his duty by the mandatory provision of that section.

Mr. CHINDBLOM. How does he get the ballots and blanks and registry books and poll books? Are those prepared by himself, or are they sent to him?

Mr. WICKERSHAM. They are all sent to the commissioner in the district by the clerk of the court, and he distributes them himself in person, or by sending them by some carrier to these people, because he does it when he simply notifies the election officers; he sends them at that time, within the 10 days immediately preceding the election, that is, before those 10 days.

He has 20 days there in which to do those things, and it is invariably done in that way, and that is the law, and it is a mandatory law, and if he does not do it, or violates it, he is subject to imprisonment in the penitentiary by section 15 of this act. So that it is mandatory. Whenever a law makes a penal provision, whenever the law declares that if you do not do anything that it says you shall do, you shall go to the penitentiary for failing to do it, then it is mandatory.

Mr. GRIGSBY. On the official?

Mr. WICKERSHAM. Yes.

Mr. GRIGSBY. Certainly.

Mr. WICKERSHAM. That is the law. That is what I am talking about. It is mandatory on the official. It was mandatory upon Commissioner French to do those acts, and he did not do them, although he was there as late as the 22d day of October, and did not do them.

Mr. CHINDBLOM. Where was the clerk of the court for the district in which Nushagak precinct is located?

Mr. WICKERSHAM. He was at Valdez, five or six hundred miles away.

Mr. CHINDBLOM. Would they have the same route by water as people at Nome?

Mr. WICKERSHAM. No; different altogether. But they got the election blanks, etc., at Choggiung, they got them there in July, and the testimony was that they were sent very early. They did not send the blanks and the ballots together, because the ballots are not made up until after the election blanks are forwarded, and you will find, if you look through the record of 1916, and this record of 1918, that the ballots did not reach the election officers at Choggiung or Nushagak either, but the other blanks did.

Mr. CHINDBLOM. What I have in mind is that Nash testifies that he thinks that these supplies came by the Nome boat in July?

Mr. WICKERSHAM. Yes.

Mr. CHINDBLOM. Would that be the same boat from which the supplies would come from the clerk of the court in that district?

Mr. WICKERSHAM. Well, they might come by that, or they might come by mail around by Unalaska. There are two or three routes by which they could come, but there is no question but what they reached there, because they were at Choggiung, and are before you now.

Now, I want to call your attention to another matter, and that is this Hawaiian case. Before I do that, though, I want to say again that there are a lot of things of that kind in this case that Mr. Grigsby criticizes me for, which are just as inaccurate as I have shown those two things to be, and he is mistaken about both of them. When French did not deliver the orders selecting and modifying these election officers, the conclusion follows that they were not notified, because that was the only way he could do it. That is the point I am making about it. We have shown he did not do it positively and accurately. There is no testimony the other way; there is no question about it in the record.

Now, I want to call attention to this case in Hawaii, the matter of the ballots. In five or six precincts these Australian ballots that are provided for by the act of 1915 of the Territorial Legislature, were furnished to the election officers, and they were voted without tearing off the numbers at the top. Now, the Hawaiian case, which has been read here, is directly in point on that question, but Mr. Grigsby says that is not mandatory.

Mr. GRIGSBY. I did not say anything about mandatory.

Mr. WICKERSHAM. Well, I misunderstood you if you did not.

Mr. GRIGSBY. I said it was not in point.

Mr. WICKERSHAM. In the argument that he made here and in his very nice little book of opinions which he gave to each one of you gentlemen——

Mr. GRIGSBY. That is your brief. Do not call them my opinions.

Mr. WICKERSHAM. I am referring to the nice little book that you gave to each one of these gentlemen containing your opinions. You will find his opinion in the brief asserting that this election act of 1915, passed by the Legislature of Alaska, is mandatory, and then in large type as well, on that page, he gives the reason why it is mandatory, and he declares most vociferously, in the loudest possible type, that the election law passed by the legislature in 1915 is mandatory in every provision. He can not go back on that. Not only that, but Judge Jennings, in the case of Sulzer against the canvassing board, which is here before you, went into that whole matter also and declared that the election law of 1915 was mandatory, and he went into it at great length, and he denounced everybody at Choggiung and Nushagak who did not do certain things, for the reason that they all knew, because this law was mandatory, that they had to do it, and because they did not do it in this precinct, Judge Jennings threw this precinct out, because that law had not been complied with when it was mandatory.

If it was mandatory in 1916 and 1918, then it is mandatory in 1920. If it was mandatory in Mr. Grigsby's opinions, which he has distributed to you, gentlemen, it is mandatory in this case, and it is provided in that law that if certain things are not done, these men shall be punished as provided in the law, and having this penitentiary offense attached to it makes it more mandatory according to their theory.

Now, it was not done in these precincts. The Hawaiian case fits it exactly, except it was not mandatory in Hawaii. That is the only difference. In the Hawaiian decision, if you will read it carefully, you will find it was not mandatory there, and yet the committee and

this House held that a violation of that law invalidated those ballots, and you threw them all out, when the law was not mandatory. If that was the law then, it ought to be the law now, and it is the law now if it was the law then.

Mr. Grigsby will come back at me and say, "Well, you said that law was not valid." The Hawaiian case says that the law was not valid; that they were proceeding there by mutual consent among themselves, and just assumed the territorial law had some force and effect, but the committee said that because they had assumed that much they were bound by it. When Mr. Grigsby says this law is valid and mandatory, he is bound by it, and if you pay any attention to the decisions of this House, you have got to throw those ballots out. You must do that or reverse the Hawaiian case.

Mr. CHINDBLOM. Do you recall where you discussed the Hawaiian case in your brief?

Mr. WICKERSHAM. No; I do not, but I did discuss it.

Mr. GRIGSBY. It is on page 111 of his brief.

Mr. WICKERSHAM. Mr. Grigsby testified something about the introduction of this Australian ballot law in the Territorial Legislature of Alaska, and he says that my friends are all opposed to it, and he and his friends are the few people who have ever been in favor of clean government and clean elections up there. They were in favor of the Australian ballot system.

Mr. GRIGSBY. No; I claim that you were in favor of it, but all of your friends were opposed to it.

Mr. WICKERSHAM. It was introduced in the House by Dan Driscoll.

Mr. GRIGSBY. You said it was not valid, and I admit it.

Mr. WICKERSHAM. The record shows, I think, that it was bill No. 1, and that is right, and I oppose the bill now, as it is before this committee. It was not introduced in the Alaska Senate, as you suggested.

Mr. GRIGSBY. Everybody voted for it, did they not?

Mr. WICKERSHAM. But when it went to the Senate the Senate was very largely opposed to it. I will not mention any names, but it came back to the Alaska House with a lot of amendments, which Mr. Grigsby in his opinion says were void, and almost rendered the whole bill illegal. If it had not been for those amendments, there would be no question, but he says that on account of the amendments the whole bill was illegal, or, at least, that all of those amendments were illegal.

Not only does Mr. Grigsby say that my friends were opposed to the Alaska Australian ballot law, and held it up originally, but when he began drawing this brochure, under which he held the special election on June 3, where he is elected by a guess, and without any compilation of the returns, he repealed the Australian ballot law for that election only. The bill is here before you, and in that law this Australian ballot system in Alaska is repealed, so far as that election is concerned. I am going to turn back here and show you just where that is.

Mr. GRIGSBY. I repealed it anyway; I had to repeal it.

Mr. WICKERSHAM. You admit you did?

Mr. GRIGSBY. Yes; I had to repeal it.

Mr. WICKERSHAM. No; you did it yourself.

Mr. GRIGSBY. Thank you; you said it was void, so I repealed it.

Mr. WICKERSHAM. He says there were no illegal votes received in Cache Creek; that there is no proof of it, he says. Now, the proof is, and there is no question about it, there is no denial of it, no attempt to explain it in the record, that the election at Cache Creek was held between 4 o'clock, when they got up and had breakfast, and 10 minutes after 5, when the whole cavalcade started out over the snows for the outside world. That is the testimony of Red McDonald, by the watch, and it is not denied by anybody. But Mr. Grigsby says there were others there who did not testify to it. That is true. I did not call all those fellows whom we wanted to go on the witness stand. We got every one that we could. There was no one left in the country. They had gone when we got there. Somebody told them they were going to be prosecuted, and we could not get anything out of them. They said they did not know, they could not state what time it was; that they left there by lamp light, and they went out over the snows in the morning, but they did not know what time it was. Mrs. Wheelock and Red McDonald both testified to the facts. Mrs. Wheelock was not as accurate as Red McDonald, who had charge of the movement of things. He was in charge of the movement of everything that morning, and he testified accurately as to the time these people left there.

Mr. Grigsby has admitted those things, and that there were illegal votes cast there. It is just one of those little things that does not cut much ice. He says you have got to be liberal in these things up in Alaska, and give a liberal interpretation to these laws, so that he and his friends can hold elections as they please. If you want good government in Alaska, and honest elections in Alaska, and you want the laws that you have enacted for the holding of elections yourselves honestly complied with, then you have got to comply with them yourselves.

Section 15 of this act is very specific. Section 15 of the act of May 7, 1906, being section 406 of the compiled laws of Alaska, provides, and I want you people to listen to the law you passed, and the law as it is written for Alaska:

That any person who, by any means, shall hinder, delay, prevent, or obstruct any other person from qualifying himself to vote or from lawfully voting at any election herein provided for, or who shall knowingly personate and vote or attempt to vote in the name of any other person, or who shall vote more than once at the same election, or shall vote at a place where or at a time when he may not lawfully be entitled to vote * * * shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment of not more than five years, or both, in the discretion of the court, and shall pay all costs, etc.

So, if one votes at a time when he may not lawfully vote, then it is a felony, and he shall go to the penitentiary for it, and yet Mr. Grigsby says, "Oh, if they did vote three or four hours ahead of time, and did leave the precinct before 8 o'clock, that does not make any difference anyway." It makes a lot of difference. If they vote three or four hours before the time for the opening of the polls, and the law specifically provides that the polls shall be opened at 8 o'clock ante meridian, and shall hold open until 7 o'clock post meridian, and if you vote at any other time it is made a felony under this law, and any election officer who permits it is guilty of a felony,

anybody who has anything to do with violating this law under those circumstances is guilty of a felony, so it is a mandatory provision, and is made mandatory by a direct penal provision of this act, passed by Congress itself, and under such a law, of course, illegal votes can not be counted in any election.

Mr. GRIGSBY. You refer to the special election law, there?

Mr. WICKERSHAM. I am referring now to the Cache Creek situation.

The CHAIRMAN. Do you contend, Judge, that because a law has a penal clause attached to it, that it therefore becomes a mandatory statute for all purposes?

Mr. WICKERSHAM. Absolutely. Of course, there are provisions in it which are not included within the penal provision, but so far as they are covered by the penal provision they are mandatory. I see now what you are asking, and I will change my answer. Not entirely; no; but so far as the provisions of the act are covered by the penal clause, they are mandatory. That is a more accurate answer to your inquiry.

The CHAIRMAN. Then you mean that a penalty attached to an act for doing or not doing certain things would make it mandatory for that purpose?

Mr. WICKERSHAM. Absolutely.

The CHAIRMAN. Then it would not apply, or might not apply, in other respects.

Mr. WICKERSHAM. When matters and things are not included within the penal clause, it might not be mandatory, but when they are included within the penal clause, or this section 15 of the act of Congress, then it is mandatory, but it may be that there are things in this law which are not penalized. They may, according to their relation to the subject matter, be either mandatory or directory, as the case and the facts may warrant.

Mr. O'CONNOR. Do you think that when the penalty is for the failure to send election supplies into a precinct, and the prosecution is based upon that penalty, and a judgment had in the court, and the man sent to the penitentiary, that, in addition to that, the election is null and void in that precinct?

Mr. WICKERSHAM. Yes, sir; that is the authority all the way along; otherwise, just as the authorities all say, Mr. O'Connor, if an officer may hold out one precinct he may hold out others, and he may hold out enough to change the result of the election every time.

Mr. O'CONNOR. I thought the penalty fixed, by sending them to the penitentiary, was a deterrent to prevent them from violating the law, rather than carrying the penalty to the election district, too.

Mr. WICKERSHAM. That is true, so far as the election officer is concerned, undoubtedly; but assume, Mr. O'Connor, that there are a large number of precincts in an election district and the commissioners are corrupt, as many of them are, and can, by refusing to hold those elections, turn the tide of every election in Alaska, and there is no question about it; what are you going to do about it?

Mr. O'CONNOR. Send them to the penitentiary.

Mr. WICKERSHAM. That does not cure the matter of the illegal election. That is only one of the things you may do. You may do both, and the authorities are all one way on that. I have cited you

authorities at great length in my brief and have read them to you at great length on this floor.

Mr. CHINDBLOM. Is that act of 1906 in the record?

Mr. WICKERSHAM. Yes; and it is in the United States Statutes.

Mr. CHINDBLOM. I know; but is it printed in this record?

Mr. WICKERSHAM. Some parts of it are, and I think some parts of it are printed in my brief and some parts of it in Mr. Grigsby's brief; and it is all in the United States Statutes, of which you must take judicial notice. You do not have to prove the statutes.

Now, take the Fortymile district, for instance. There two precincts were abolished. Steel Creek was abolished and the Jack Wade precinct was abolished. Those were the two places where the people lived, and it is testified to by Phillips and the men who went on the witness stand that they were the two large precincts; those were the precincts where the people lived; those were the precincts where the population of that country was located. That is testified to in the record, and they were both abolished or added to to other precincts, and I read you Donovan's order. For instance, he attached Jack Wade to Moose Creek, and he did not establish any polling place in Moose Creek, so there was no voting place in Moose Creek precinct nor Jack Wade, where the people were. As a matter of fact, they did vote at a little cabin 18 miles away from Jack Wade, up in the woods and in the mountains. That is where they did vote. There were two miners working claims in that neighborhood, and they got them in and voted them, when they knew where they were. But the people down at Jack Wade did not know where to go and did not go.

At Moose Creek they knew that Jack Wade was 18 miles away from them, but they did not know where the voting place was.

The same is true of Steel Creek, that was attached to Franklin, some 15 or 16 miles away. Of course, Franklin was a better known place, but there was no polling place established by this order at any of these precincts. They made three precincts out of five, and did not establish a polling place in any one of them, and the two precincts that were abolished were two representative precincts.

Mr. GRIGSBY. One of them was a Socialist precinct.

Mr. WICKERSHAM. In 1916, at Jack Wade, I received 8 votes, and Mr. Sulzer received 4, and at Steel Creek in 1916, I received 7 votes, and Mr. Sulzer received 1. Of course, the Socialist, as Mr. Grigsby says, had a larger majority in Jack Wade than I had.

Mr. O'CONNOR. What did the socialist poll in both of these precincts that were abolished?

Mr. WICKERSHAM. In 1916, 6 or 7.

Mr. GRIGSBY. In Jack Wade? How many in Steel Creek?

Mr. WICKERSHAM. I think 3 or 4. He says that there were no other precincts abolished, but there were two other precincts abolished, and that is all shown in Judge Bunnell's testimony when he was on the witness stand. He abolished two other precincts in the order he sent out. He abolished Cripple precinct, and Fish precinct. In 1916 I received 12 votes in Cripple precinct, and Sulzer 1, and in Fish I received 9, and Sulzer 1, so that all of the precincts abolished in 1918, where votes had been cast in 1916, were representative precincts, all four of them.

"Oh, well," Mr. Grigsby says, "There were not many votes cast there, and it would not make much difference." It does make a lot of difference because in those four precincts in 1916 I received 36 votes, and Mr. Sulzer only received 7. They were abolished in 1918, and I was cut out of 29 votes upon the face of the returns of 1916, and upon the testimony in this case, 16 votes in those four precincts.

Mr. O'CONNOR. Did they vote in any other precincts?

Mr. WICKERSHAM. No; the testimony is that they were 18 or 20 miles away from Jack Wade and Steel Creek and they would have had to make a round trip of 28 or 34 miles.

Mr. O'CONNOR. Does the testimony show that they did not participate in the election in other precincts?

Mr. WICKERSHAM. It does, because the days were very short. Mr. Grigsby tried to give you the condition, that the day at Cache Creek started very late or very early, I forget which it was, and it was a long way over to the other place. The day was long over at Jack Wade and short over at Cache Creek, although they are in the same latitude. They could have gone 34 miles round trip, and voted over at Jack Wade or Steel Creek. Well, they all testified they could not do it; that they would have had to go over there and stay all night, and think of 35 or 40 people going over to Moose Creek and remaining all night in a cabin where 2 men live, and that was the only thing there was there in the way of accommodations. It would take them a day to go over and a day to come back and cost them \$8 to make the trip. That is the situation of this matter, gentlemen.

I want to call your attention just for a second again to this Donovan order. The first paragraph of section 5 of this act provides that all of the territory in each recording district shall constitute one election district; that in each year in which a Delegate is to be elected the commissioner shall at least 30 days before the date of said first election and at least 60 days before the date of each subsequent election issue an order and notice subdividing the district into voting precincts and pointing out the polling places. That order provides for those things, and they must be done 60 days before the election. The proof is here in the record, and you will find it in full in this record, that it was done just 35 days before. The order was made only 35 days before, and Judge Bunnell on the witness stand was asked about this, he being the judge in the district, and whether they had to do these things, and he said yes, it was the understanding that that order had to be made 60 days before the election to make it legal, and the notice following had to be made 30 days before the election.

Those matters are on the question of this Fortymile district. The fact is that they knew of this penal clause of this act of 1906, and the failure of that commissioner in the Fortymile district to make an order in compliance with the law was a penal offense, and he is guilty of a crime.

Mr. HUDSPETH. Your contention is, Judge, that the entire vote of that district should be cast out?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. On account of his failure to make the order?

Mr. WICKERSHAM. In that precinct it is much stronger than it is in the other, because in this district he did make the first order. We do not know anything about the second.

Mr. HUDSPETH. As I follow you, you consider the district a unit?

Mr. WICKERSHAM. Yes.

Mr. HUDSPETH. And if an election officer fails to comply with the law, relative to one precinct in that district or that unit, it casts out the vote of the entire district?

Mr. WICKERSHAM. If he does it in a fraudulent way, and, if you remember, I read you authorities from Texas and from other States, and the authorities are uniform on that matter.

There is no question about it. If in the jurisdiction the officers who have duties to perform according to the statute fail and refuse to follow the law, and do it fraudulently, as they did in these two cases, with the purpose of reversing the effect of the statute, if it was all done for that purpose, then their act is fraudulent entirely and not fraudulent in part.

Mr. O'CONNOR. Fraudulent entirely as to the jurisdiction.

Mr. WICKERSHAM. Yes; as to that jurisdiction.

Mr. O'CONNOR. Would not fraud in the jurisdiction affect the result throughout the Territory?

Mr. WICKERSHAM. Yes.

Mr. O'CONNOR. Why not extend the fraud, then, to the Territory?

Mr. WICKERSHAM. If an officer is in a position in Alaska to throw out different precincts by refusing and his man gets 10 votes and the other man gets 10,000 votes, you would not throw out the man who got the 10,000 votes?

Mr. GRIGSBY. That would be enough to affect the result.

Mr. WICKERSHAM. Not on the theory we are talking about.

Mr. GRIGSBY. Yes, on that theory.

Mr. HUDSPETH. I remember one contest in Texas, where it came before the Senate, on the ground that the election officer failed to write his name across the ballots. The law requires that he shall do so. In the contest, as I recall now, the committee refused to throw out those ballots.

Mr. GRIGSBY. It was probably not a mandatory proposition and it would probably perpetrate a fraud to do it.

Mr. HUDSPETH. There was no evidence of fraud in that.

Mr. WICKERSHAM. It might be an injustice, and not call it fraud. But no election committee will throw out election precincts against a man who did not commit a fraud, because the other fellow did commit a fraud. That would be giving a premium upon fraud.

Mr. HUDSPETH. Yes; that was held at that time.

Mr. WICKERSHAM. You will find that Rowell has 20 cases cited upon that point; so that the House has committed itself to doing justice in those matters and not injustice.

Now, Judge Bunnell, at page 613 of this record, testified as follows [reading]:

Q. And you state that from your reading of the law in regard to posting the notices no specified time prior to election day is required under the law?—
A. No; I didn't state that. My understanding is that the notices should be posted 30 days before the date of the election, and that the order redistricting, under the compiled laws, has to be made 60 days prior.

So that that is a complete statement of the law by Judge Bunnell.

That was not done in this district, and it was done fraudulently, for the purpose of gerrymandering this district. They talked to Donovan about it, and Donovan said, "If I put Jack Wade onto Moose,

or Steel onto Franklin"—I have forgotten which one, now—"the people will not go there and vote." So that he had that distinctly in his mind, and took advantage of the situation and fraudulently disfranchised those people.

Now, the committee ought to do one thing or the other—either throw the precincts in his jurisdiction out or allow me the votes of those people who came there and testified that they would have voted if that had not been largely gerrymandered so that they could not get to the polling place. The people of that district were up in arms about it, and some who came there testified that they would vote for Sulzer, but I have a clear majority of 16 votes. I am entitled to have those 16 votes or to have the precinct thrown out. I would prefer to have it, as these people have testified that they would have voted if they had had the opportunity, but the committee itself, of course, will lay down a rule.

Now, I want to talk to you about a rule of residence. I want to call the attention of the committee very briefly to a general rule. It is not in Rowell, but I can tell you where it is. I have it cited.

The Congress had laid down this sort of a rule—that with respect to unmarried men the rule is much more liberal with regard to their place of residence than it is with respect to married men; that if an unmarried man is working out on the railroad at a camp where he does not intend to reside at all, and does not make any pretense that that is his place of residence, but he has no other home, and he is there 30 days in the precinct and a year in the State or Territory, he may vote in the place where he is working on the railroad, probably living in a camp or in a box car, because that is the only home he has got. They have gone that far with respect to unmarried men. But in the same opinion and in the same decision, which is an opinion of the House of Representatives, they held a married man is in a different situation; that a married man resides where his family resides; that if he has a home and his family is at that home, and he goes back there from time to time, that is his place of residence, and not the box car where he is living while he is working on the railroad.

Now, the committees of the House have laid that rule down very clearly, and they establish it upon the basis that it is the home which is his residence, where his family reside, where his wife and children live; and that is undoubtedly the rule laid down by all of the authorities, perfectly clear; and, it is in McCrary and other authorities; and the basis of that is fixed on the fact that it is the home; the home is the residence.

Now, for instance, we called attention here at one time to Gov. Riggs, and upon my testimony before the committee, without being sworn, I called attention to the fact that in 1916 Gov. Riggs resided here in the city of Washington until May, 1916, and in May, 1916, he took his wife and children from the place where he had lived here several years, and where the children were born—as I showed you by ex parte testimony—and took them to Alaska, and he and his wife voted there in November following.

The theory of the opposition is that Gov. Riggs lived in Alaska because he had been up there working on the railroad. The fact is that he had not a residence in Alaska, but his residence was here with his family. The decision of the committees of the House decided

the question as a matter of fact and law, that the home of a man is with his family; and that his home was here in Washington, and that his work there was temporary work; and when he took his family up there, unquestionably thereafter his domicile was instantly transferred to Alaska. This is in McCrary instead of in Rowell.

Mr. Grigsby also makes the point that some of these soldiers enlisted in Alaska and resided in Alaska at the time of their enlistment, and that their enlistments in Alaska were there. Take the enlistment of Campbell. He is the shining example of that class.

Now, I want to call the attention of the committee to what I have said about Campbell in my brief, at page 84. Campbell's deposition you will find at page 256 of the record. He was a sergeant in the Signal Corps of the United States Army. He enlisted February 14, 1909, at Columbus Barracks, Ohio; and I call your attention now to the certified copy of the record of enlistments of this soldier made by the War Department, an official statement consisting of, first, the name; second, the date of original enlistment; third, the date of reenlistment; and fourth, the place of residence at the time of enlistment. Now, that is a certified statement of the Secretary of War, that his place of enlistment at that time was Columbus (Ohio) Barracks, and that his residence was Norwalk, Ohio, at the time of his enlistment. He reenlisted at St. Michael, Alaska. When they took his deposition, my attorneys, through some oversight, put the question to him like this:

Q. State your name, age, and occupation.—A. Name, James M. Campbell; age, 29; occupation, soldier.

Q. Were you a soldier in the United States Army November 5, 1918?—A. I was.

Q. When and where did you enlist prior to last-named date?—A. I enlisted at St. Michael, Alaska, February 11, 1915.

Q. Were you a resident of Alaska when you so enlisted?—A. I was.

And upon that basis Mr. Grigsby now asserts that he was a resident of Alaska at the time he enlisted, and therefore that he had a right to vote, when the record all shows perfectly plain, with respect to him and three or four others at the time the mistake was made, that his residence was in a foreign State, and that this was a reenlistment instead of an enlistment.

Mr. CHINDBLOM. Do you think the records agree with his own testimony?

Mr. WICKERSHAM. Yes; they agree with it. They do not contradict it.

Mr. CHINDBLOM. The record relates to the prior enlistment.

Mr. WICKERSHAM. Yes. You figure out the time of that prior enlistment, and you will get him right down to that minute.

Mr. GRIGSBY. Where did he vote?

Mr. WICKERSHAM. That is all shown there.

Mr. GRIGSBY. He just went there.

Mr. WICKERSHAM. That is the way in respect to him and several others of these men. I wanted to get that straight with the committee, because I did not want the committee to think that it was so merely because Mr. Grigsby says so, that those men enlisted in Alaska. They did not. The record shows where they enlisted.

He also makes reference to Morgan's affidavit. Morgan's affidavit you will find mentioned at page 684 of the record and page

86 of my brief. Page 684 of the record is the testimony of Col. Lenoir.

Mr. GRIGSBY. I call attention to the fact that Mr. Wickersham's time is up. I do not want to object to his continuing, but I want it noted in case I should want to go a little over my time.

The CHAIRMAN. You have five minutes more.

Mr. WICKERSHAM. I have only five minutes left?

The CHAIRMAN. Yes.

Mr. WICKERSHAM. I think it is much more desirable to get this thing fairly before the committee; but I beg to call attention to one matter, and that is this Ames case. I have examined the record in respect to this Ames matter very carefully. I find that Mr. Wilson did not say that the Ames case had been decided one way or the other. He referred to it as stating the correct rule of law; that is all.

Now, I have looked it up very carefully, Mr. Chairman, and I am sorry that my time is so short, but you will find the Ames case stated in the Senate Elections Committee cases from 1789 to 1913, at page 375. You can not understand the Ames case unless you take the case immediately preceding it, the case of H. H. Reval. This was in Mississippi in reconstruction days, and Ames was a major general in the Union Army in charge of military affairs in Mississippi. He was the military governor of Mississippi at that time, and he aided and assisted, as the record shows, in securing the election of a Negro legislature in Mississippi, and when they had that, they elected a Negro one of the Senators, and they elected himself, Ames, as the other senator, and the record is all right here together. Ames certified to the election of Reval, who was seated first; and then, when there came the fight on Ames, of course Reval was there to assist Ames in getting through.

Now, I will not go any further with that, because I want this committee to examine those matters. If there is anything that will bring the blush of shame to a Republican, or to a Democrat either, it is the record of those two Senators here; and then in Mississippi, where the Negroes were herded by the bayonets of the general in command, by the military government of the unhappy people there, and in that election he elected a Negro and himself as Senators. It was so shameful that the entire personnel of the Judiciary Committee of the United States Senate reported against him. Conkling and Edmunds and Bayard and Thurman and Lyman Trumbull were on that committee, and they reported against him, that he ought not to be seated, and if you will go through this record you will be amazed by the statements made by Thurman, and by Garrett Davis, of Kentucky, and Conkling and Edmunds, and others of those constitutional lawyers, who were the greatest that ever sat in the United States Senate. They were all agreed that there was but one side to the law of the case, and I want to read you very briefly what Conkling said. This is on page 2348, part 3, Congressional Globe, second session, Forty-first Congress. It is very brief. [Reading:]

We are disputing in the face of an unbroken current of authority, legislative and judicial, which says that the bodily presence of Adelbert Ames in the State of Mississippi is a fact entirely immaterial in the disposition of this issue. We are disputing against a current of authority which says that if the residence of Adelbert Ames is to be found at all in the State of Mississippi, it is to be

found without reference to the fact of his bodily presence, that being involuntary and constrained. Standing in the presence of these authorities put down to acknowledge these universally asserted principles of law, we are disputing in order to find a respectable apology in the first place for placing upon the record a proposition that Adelbert Ames in fact and in truth established a residence in the State of Mississippi, when in fact and in truth he did no act at all; and in the second place, we are in quest of an excuse for asserting that Adelbert Ames formed and entertained the intention necessary to go with such an act as all declare to be absent; and in this quest of an excuse we are reduced to the desperation of hunting it out amid these scanty, sterile, and unproductive elements.

The CHAIRMAN. Your time has expired, Judge.

STATEMENT OF MR. GEORGE B. GRIGSBY—Resumed.

Mr. GRIGSBY. The committee can read the record of the Ames case, so that Mr. Wickersham will suffer nothing from not being able to present that in detail before the committee. The point on which I cited the Ames case was that the Ames case was cited as an authority for throwing out soldier votes in Alaska. The report of the Senate committee, which is contained in this volume which Mr. Wickersham has shown you, was cited as an authority by Riley Wilson, and then again by Mr. Wickersham, before this committee, and the very volume itself shows that the Senate of the United States overturned that decision by a vote of 40 to 12, after thorough and long-continued debate, able lawyers on both sides discussing the case; and they nowhere in their decision violated the principle that mere bodily presence of a man as a soldier is not evidentiary of his residence, either for voting purposes or as qualifying him to occupy a seat in the United States Senate. You gentlemen can read the case.

Now, I have only 30 minutes, and I shall hurry along and answer one or two new points made by Judge Wickersham.

In response to Mr. Chindblom's question as to whether any other Territorial legislature ever had the power to change the rule governing elections for the office of Delegate to Congress, Mr. Wickersham said no; they did not have. In the Revised Statutes, section 1862, it is provided that—

Every Territory shall have the right to send Delegates to the House of Representatives to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly.

The Revised Statutes, section 1860, gave to the legislature the right to fix the qualifications of their electors to elect members of the legislature. Consequently, the legislature had the absolute power at all times after the passage of this act, in all Territories thereafter organized, to fix the qualifications of voters; and not only that, but it is provided that at all subsequent elections therein, as well as all elections for delegates in all organized Territories, such times, places, and manner of holding such elections shall be prescribed by the law of each Territory.

Now, he wants you to believe, notwithstanding the third section of the organic act extends to the Legislature of Alaska the right to amend all laws of Congress relating to Alaska, except those in which there was an express prohibition, that they can not amend that act of 1906 relating to elections simply because in this organic act there

was incorporated a provision which did not belong to it, changing the date of the delegate election and continuing the existing laws regarding the conduct of that election; and Mr. Wickersham places himself in the attitude of coming before you and saying that what he calls in Alaska his "full Territorial government bill," the one he made his campaigns on, did not even give the people of Alaska the ordinary powers that were extended to the people of every other territory.

Now, the longer he talks the more I am convinced that I was wrong in my original opinion which is in my published report, in which I express the opinion that the legislature could not change the qualifications of voters in Alaska. I am still in doubt; but as I said in my main statement in this case, I will be pleased to be overruled.

I also said it did not make much difference in this case how many voters were not residents in the precinct, because they were about equally divided politically.

Now, I stand where I did before on this Nushigak case. If there is a scintilla of evidence in the testimony of Nash, who is the only witness who testified with regard to Nushigak, to the effect that the United States Commissioner at Chogiung failed to appoint election judges at Nushigak, if there is a scintilla of evidence to that effect, I am willing that the election in that whole recording district be thrown out. I do not ask that you find sufficient evidence to find it as a fact, but if you find a scintilla of evidence. There is his testimony. I read it line for line. Mr. Wickersham stood here a few minutes ago and told you that the supplies referred to, which the witness Nash testified that the commissioner did not take over, were the orders appointing election judges. If you will read the testimony you will find that he referred to the supplies which were supposed to have arrived in July from the clerk of the court and not to the notices of election or order appointing judges.

Furthermore, if you will read the statute which places the duty on the United States commissioner with respect to providing for the election, you will find it provided that at least 30 days prior to the date of the holding of such election the commissioner shall select, notify, and appoint among the qualified electors in each voting precinct three election judges in each precinct. He can do it 30 days before or more than 30 days before. Now, the witness Nash testified about what he did in the way of creating those two voting precincts in 1918; that is, Chogiung and Nushigak. On page 77 of the record Nash testified as follows:

Q. Do you know whether any notice was given of the holding of election or not?—A. There was a notice given in each place.

Q. In each precinct?—A. Yes. I know there was one in ours, and they claimed there was one in the other. I did not see it. I was not across the river, but they claimed they had notice.

Now, that notice also must be published over there 30 days before the election, and must be issued by the commissioner, and if it got over there, which the testimony of Nash says it did, the commissioner must have either taken it over there or sent it over there, and when he did that he could well, and probably did, and the presumption of law is that he did, also appoint and notify the judges of election.

The testimony of Nash with reference to the visits of this commissioner over there afterwards is as to trips between the 7th of

October and thereafter, and it all relates to whether he took any election supplies over or not. Now, all the evidence in the case shows that he did not have any election supplies to take over. There is no law anywhere, either congressional or Territorial, requiring him to deliver any supplies whatever to the election boards, except the legislative act, which requires him to deliver the Australian ballots themselves, and they did not arrive in Chogiung from the clerk of the court, and the voters in Chogiung also used a homemade ballot.

I will go further and I will say that there is not a scintilla of evidence in this record from which an inference can be drawn that the United States commissioner at Choggiung failed to do any act or thing required of him by law—not a scintilla—and yet the honorable judge puts into the mouth of this witness in three different places in his brief the direct statement that the witness Nash testified that the United States commissioner at Choggiung failed to appoint election judges at Nushagak, I say he never said anything of the kind, and there is not a scintilla of evidence that he so failed; and if there is a scintilla of evidence that he did, I want you to find that he did as a positive fact; and I rest the vote in that precinct on that as a positive statement. And when he hauled in this testimony that Nash had not given and put it in the mouth of this witness in order to sustain the theory of his case, which rests entirely upon the nonappointment of these election judges, when he did that without any foundation in the record, I say that you have a right to distrust him in all the rest of his statements.

That is not the only point in his case where I have tripped him up and showed you that he has misled you. The printed record will show that, and I do not care to go into it again.

The judge says I do not know what the facts are in this case. I will retort by saying that he either does not know what the law is, or he pretends that he does not. Now, he tells you what a mandatory statute is, and he says the test is whether there is a penalty attached to the nonperformance of the duty; that that determines whether or not a statute is mandatory.

Everybody knows that when a duty is to be performed under penalty for nonperformance, and the penalty prescribed for the violation of that duty, that law is mandatory as to the official; but what the chairman was talking about and what you gentlemen are interested in is whether the law is mandatory or directory with respect to acts performed under it. Now, we have a law that says that an election shall be held on November 5, 1918. We have another law which says that there shall be a notice of election published 30 days before the election. Then we have a law which says that the failure of an official to perform any duty prescribed and placed upon him by this act shall be guilty of a crime.

The law is mandatory upon the official to publish that notice. If there is no notice of election but they hold the election just the same, what becomes of your law with respect to the publication of this notice? The courts hold that it is directory. Whenever an election is fixed by law, unless you can show that on account of lack of notice a sufficient number of voters are disfranchised to affect the result, the rest of the votes according to all the authorities, are counted as legal votes. In Fairbanks, the gentleman's residence, in this last election, there was no notice of election, and I

knew it before I commenced the preparation of this case; but I found it was immaterial. The judges were appointed. Everybody up there that was entitled to vote, voted. The law requiring the publication of a notice was directory. If it had been mandatory, the vote in Fairbanks would have to be thrown out, for that means that any act done by virtue of that law not in compliance with the full terms of the law is void. That is the difference between a mandatory and a directory statute.

I stated that the Australian ballot law was mandatory so far as the form of the ballots was concerned. Mr. Wickersham just stated that I said it was mandatory in all respects. My language is before you. I limit the application of my language particularly and restrictively to the Australian ballot fixing the official form of ballot, as you will see. Now, if you examine the authorities with relation to the Hawaiian case and Australian ballot act, where the numbers were not detached from the ballot, as set forth in my brief and in the opinion, you will find that all the authorities bear out my position, that unless you have a mandatory statute prescribing the effect of the failure to detach the numbers and a law against distinguishing marks, the authorities all, without exception, hold that a failure of the judges in this respect shall not deprive an innocent voter of his vote, whether or not the judges are more or less willful or negligent. There have been no authorities whatever cited by the gentleman to the contrary, except the Hawaiian case, where they did have a law prescribing that any ballot which had on it any mark, symbol, or device not authorized by the statute should be null and void.

There was no authority for placing any numbers on the ballots. Therefore, having numbers left on them when they were cast, which is prohibited in express terms by the statute, the committee on elections threw them out, and threw them out for that reason.

Now, gentlemen, I have had what I consider sufficient time to present my case. There is just one other thing I want to mention, and then I will close. The judge testified, as he admitted he would, that there were two other precincts in Alaska where the voters were disfranchised because of the action of Judge Bunnell. Now, Judge Bunnell has nothing to do with the creation of voting precincts. He testified he had never been in the Fortymile precinct; that it is 600 or 800 miles away from Fairbanks; and he testified with respect to nothing material about Cripple Creek and Fish Creek precincts, where the judge said he lost 20 or 40 votes. I refer to page 610 of the record, where the testimony is as follows [reading]:

There is also a statement that some fraudulent action was had by the commissioner in the election districts wherein Cripple Creek, Fish Creek, and other voting precincts in the fourth division are situated. About that I have no knowledge at all. I don't know where the Fish Creek precinct is, unless it is a precinct somewhere about 20 miles from Fairbanks.

There is no evidence in the record anywhere that any voter in any precinct, except Jack Wade and Steel Creek, was deprived of his vote by reason of any redistricting of recording divisions.

Mr. CHINDBLOM. Was it not Judge Bunnell who wrote a letter to the commissioners of the recording districts on account of shortage of funds?

Mr. GRIGSBY. No. Bunnell's clerk wrote the letter—Bunnell's testimony showed that—that they should exercise due economy in reference to the conduct of the election, and calling the attention of one or two commissioners to the fact that where there were not but 5 or 6 voters a precinct should not be created, because they had run short of election money, as you say. That is all contained in Judge Bunnell's testimony. Judge Bunnell testified that his clerk wrote this letter and submitted it to him and he saw it and approved it before it went out. Now, the only act that the record shows was done with respect to that was the redistricting of the 40-mile recording district, where two precincts, each of which contained less than 30 legal voters, were abolished, and attached to other precincts.

Mr. CHINDBLOM. As a matter of fact, all that Judge Bunnell would have to do with the matter would be the appointing of the commissioners in the recording districts, would it not?

Mr. GRIGSBY. That is all he would have to do with it; and Judge Bunnell is without any fault in the matter whatever, as he is without any fault concerning any matters in either this election or the election of 1916.

Mr. CHINDBLOM. But the writing of this letter was not a duty imposed upon him by law; was it?

Mr. GRIGSBY. No; this letter was a letter sent out by the clerk of the court with the election supplies. He calls attention to the fact that there is no reason for going and buying a new ballot box in every election, and calls attention to other economics that might be practiced; that their funds for election expenses have been exhausted, and that they had had trouble getting their accounts through and paid, and that is cited, and he in this letter calls the attention of one or two commissioners to the fact that where there are only 5 or 6 voters, there should not be a precinct created. The law requires that there shall be 30 voters in a precinct before it is organized in that place.

Mr. O'CONNOR. How many precincts are there in Alaska?

Mr. GRIGSBY. One hundred and sixty-four.

Mr. CHINDBLOM. And 9,000 votes were cast in this election?

Mr. GRIGSBY. Yes, sir; nine thousand two hundred and some odd.

This is a long record, and we have both reviewed the record at length. I have endeavored, in order to present a contrast to my opponent, to confine myself to the absolute facts both as to the evidence in the record and honest opinions as to the law. I have not created any Indian reservations out of the sky, and I have not put any testimony into the mouths of any of the witnesses that has not been testified to. If you will examine my brief and the judge's brief, you will find that I accuse him of deception with respect to every point of contention in his case, and prove it on him. So that I can demonstrate it, arguing the points separately. If he does not practice any deception with regard to the point itself, he practices deception in his manner of trying to get you gentlemen to believe that the irregularity or defect, or whatever it was, was a part of a general criminal scheme hatched by the Democratic machine in Alaska in order to rob him of this office.

Now, you have to believe that, in order to sustain his case, because there is no one of his contentions that would change the result

of this election; there are no two of his contentions that will change the result of this election. The theory of his case is to convince you that on general principles he has been wronged; that there has been a conspiracy to wrong him; that to every act which worked to his disadvantage there was a criminal motive attached, a wrongful, guilty motive; and the judge has worked himself into a frame of mind where he thoroughly believes in guilt. He absolutely is overmastered by the presumption of guilt, the opposite of the one which should actuate a man who has sat on the bench where people have been tried for their lives and liberties, and where the presumption of innocence doctrine was uttered by him in every instruction he ever gave in a criminal case.

Now, show me any character in this tragic conspiracy of his who is presumed to be innocent. On the contrary, Judge Bunnell in his brief is sentenced to two years in the penitentiary. Gov. Riggs is sentenced to five years in the penitentiary; and the United States Army officials, half a dozen of them, get various terms of imprisonment in the jail or the penitentiary, and fines without number. That is the theory of his case, and if you will study the case you will discover it, if you have not discovered it already. I am content to rest on the facts and the law in this case. I thank you, gentlemen.

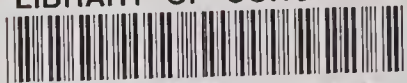
(Thereupon, at 6.15 o'clock p. m., the committee adjourned.)

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